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FEDERAL COMMUNICATIONS COMMISSION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-362

In re Applications of

Margaret C. Schaller (hereafter "Schaller")	File No. BPH-881011MG
Jane Dearden (hereafter "Dearden")	File No. BPH-881013MF
Upper Valley Christian Communications Fellowship Inc. d/b/a Higher Ground Broadcasting (hereafter "Higher Ground")	File No. BPH-881013MG
Smith and Barr Communications, Inc. (hereafter "S & B")	File No. BPH-881013MH

For Construction Permit
for a New FM Station on Channel 282A
in Hartford, Vermont

HEARING DESIGNATION ORDER

Adopted: July 24, 1990; Released: August 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. On April 3, 1990, S & B filed petitions to deny against Schaller, Dearden and Higher Ground. Specifically, S & B contends that each of the three applicants' proposals fails to comply with the city coverage requirements of 47 C.F.R. § 73.315(a) in that they all fail to provide 70 dBu service to the area and population of Hartford, Vermont.

3. S & B has provided engineering exhibits to support its contention that Schaller, Dearden and Higher Ground do not provide the requisite city coverage. These exhibits represent a study based on Tech Note 101 (National Bureau of Standards). The elevations of several radials have been determined, and the field strengths at several points along each radial were computed. Terrain profiles have been provided to show the location of each point, and to show the lack of line-of-sight to several areas within the legal boundaries of Hartford.

4. While supplemental showings to demonstrate deficient city coverage may be considered by the Commission pursuant to 47 C.F.R. § 73.313(e), the methodology used must be technically correct and must clearly and convincingly establish that, contrary to the results obtained using the predicted contour method, the community of license will not receive the requisite city-grade coverage. We have examined S & B's showing and find that it is technically defective in that it is based upon field intensities calculated at points unevenly distributed throughout the community as a result of the selection of unevenly spaced points along radials, instead of evenly spaced on a rectangular grid. Given this technical defect in the underlying methodology, we cannot accept S & B's conclusions as to the inadequacy of city-grade coverage resulting therefrom. Further, we do not find convincing S & B's claim that the existence of terrain obstructions in the line-of-sight signal path to the city, in "violation" of 47 C.F.R. § 73.315(b), is in large part responsible for the alleged inadequacy in city-grade coverage. Failure to provide line-of-sight does not necessarily imply deficient coverage. *See Rush County Broadcasting Co., Inc.*, 26 FCC 2d 480, 482 (1970). Since S & B has not properly demonstrated the existence of inadequate city-grade coverage, we cannot agree with its contention that the proposals of Schaller, Dearden, and Higher Ground would not provide the requisite city grade coverage for the community of license. Accordingly, the S&B petitions will be denied.[1]

5. Furthermore, S & B alleges in the petition filed against Higher Ground, that its certification of site availability was not based on reasonable assurances from the owner of the proposed site. In this regard, the staff has determined that S & B's petition to deny is essentially a petition to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications: Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), directed the deletion of all issue pleadings in pending cases, this matter raised in S & B's petition has not been considered. Accordingly, an opportunity to raise any allegations therein will be afforded S & B post-designation pursuant to 47 C.F.R. § 1.229.

6. *Section II, Item 4*. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Schaller and Higher Ground have not completed Item 4 correctly. The Schaller application gives a post office box number as her residence address. The Higher Ground application gives a post office box as the residence address for Alan Fahrner. Accordingly, Schaller and Higher Ground must both submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

7. *Dearden*. The applicant has indicated that she notified the Federal Aviation Administration of the proposed construction site. However, data in the construction permit application filed with the Commission does not agree with data filed with the FAA, and forwarded to the Commission's Antenna Survey Branch. The ASB and FAA values for the overall tower height (including antenna and all other appurtenances, and lighting) above ground level and overall height above mean sea level differ from the values submitted on FCC Form 301 by Dearden. Specifically, the ASB and FAA overall height above ground level is listed as 52.4 meters, while the overall tower height above mean sea level is listed as 379.2 meters. In her application for the Hartford facility, however, Dearden submitted an overall tower height above ground level in

response to Section V-B, Question 7(a)(2) as 56 meters and an overall tower height above mean sea level in response to Section V-B, Question 7(a)(3) as 379.2 meters. Accordingly, Dearden's application was found to be acceptable for filing. However, Dearden will be ordered to file an amendment to clarify this discrepancy with the Presiding Administrative Law Judge within 30 days of the release of this Order. In addition, an appropriate air hazard issue will be specified.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Dearden would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the petitions to deny filed by S & B against Schaller, Dearden, and Higher Ground ARE HEREBY DENIED.

11. IT IS FURTHER ORDERED, That Schaller and Higher Ground shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

12. IT IS FURTHER ORDERED, That Dearden shall submit an amendment clarifying the discrepancy between the values submitted for overall tower height above ground level and above mean sea level, pursuant to paragraph 7 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Since S & B's petition is being dismissed based on the inadequacy of its technical showing, we need not reach the refutation raised in the oppositions with respect to the actual boundaries of the community of Hartford, and the distinctions made between the Village of Hartford and the Township of Hartford.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RELIGIOUS BROADCASTING NETWORK San Bernardino, California	**MM DOCKET NO. 83-911** File No. BPCT-830505KV
A&R BROADCASTING COMPANY, A LIMITED PARTNERSHIP San Bernardino, California	**MM DOCKET NO. 83-914** File No. BPCT-830506KM
H. Frank Dominquez et al., d/b/a BUENAVISION BROADCASTERS San Bernardino, California	**MM DOCKET NO. 83-915** File No. BPCT-830506KN
Sandra S. Phillips and the ARW Company d/b/a SSP BROADCASTING, A LIMITED PARTNERSHIP San Bernardino, California	**MM DOCKET NO. 83-916** File No. BPCT-830506KO
GOOD NEWS BROADCASTING NETWORK San Bernardino, California	**MM DOCKET NO. 83-919** File No. BPCT-830506KR
SANDINO TELECASTERS San Bernardino, California	**MM DOCKET NO. 83-921** File No. BPCT-830506KT
INLAND EMPIRE TELEVISION San Bernardino, California	**MM DOCKET NO. 83-922** File No. BPCT-830506KU
TELEVISION 30, INC. San Bernardino, California	**MM DOCKET NO. 83-923** File No. BPCT-830506KV
SAN BERNARDINO BROADCASTING LIMITED PARTNERSHIP San Bernardino, California	**MM DOCKET NO. 83-925** File No. BPCT-830506KX
ALL NATIONS CHRISTIAN BROADCASTING, INC. San Bernardino, California	**MM DOCKET NO. 83-928** File No. BPCT-830506LA
CHANNEL 30, INC. San Bernardino, California	**MM DOCKET NO. 83-930** File No. BPCT-830506LS

For Construction Permit for a New TV Station

Appearances

John J. Schauble on behalf of Religious Broadcasting Network, *Thomas A. Hart, Jr.* on behalf of A&R Broadcasting Company, A Limited Partnership, *Frank Domiquez* on behalf of Frank Domiquez et al., d/b/a Buenavision Broadcasters, *Mary Price Taylor* on behalf of Sandra S. Phillips and the ARW Company d/b/a SSP Broadcasting, A Limited Partnership, *James A. Gammon* on behalf of Good News Broadcasting Network, *William M. Barnard* on behalf of Sandino Telecasters, *R. Clark Wadlow and David E. Worthen* on behalf of Inland Empire Television, *Rumiko Naito* on behalf of Television 30, Inc., *Dennis P. Corbett* on behalf of San Bernardino Broadcasting Limited Partnership, *Ashton Hardy* on behalf of All Nations Christian Broadcasting, Inc., and *John K. Hane, Katheryn Schmeltzer* and *David D. Oxenford* on behalf of Channel 30, Inc., *Robb Jones* on behalf of William S. Andrews, and *Steve Yelverton* on behalf of Mass Media Bureau.

SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P. GONZALEZ

Issued: August 17, 1990; Released: August 27, 1990

1. The Review Board, in a *Decision* released on July 5, 1988, 3 FCC Rcd 4085 (Rev. Bd. 1988), upheld the *Initial Decision* of the undersigned, 2 FCC Rcd 6561 (1987), granting the application of Channel 30, Inc. (Channel 30) for authority to construct a new commercial broadcast television station on channel 30 in San Bernardino, California. Both Inland Empire Television (Inland) and Solano Broadcasting Limited (Solano) subsequently petitioned for reconsideration of that Decision, and the Review Board granted the Petition, and in a *Memorandum Opinion and Order* released on October 26, 1988, remanded this case to the Presiding Judge for the preparation of a Supplemental Initial Decision.

2. The Review Board in the aforementioned *Memorandum Opinion and Order* concluded, after reexamining the evidence of record, that it would be

helpful for the record if additional evidence was received which detailed the activities of Inland and Solano's attorney-principals in promoting the business and policy decisions of their applicants, the nature and extent of their "investments" in these applicants as well as their likely role in the future affairs of the entities of which they are principals. It therefore instructed the undersigned to proceed as follows:

> [T]o focus on the actual roles of the various attorney-principals of these two applicants. If it appears that any of the attorney-principals performed no significant legal or consultative services for the entity, and have been merely incidental financial benefactors, we shall duly revise our *Decision*.

The Review Board also instructed the parties that to the extent that the supplemental evidence of record reflects that an attorney-principal has not been a mere "passive" investor in the applicant, the parties shall address in their proposed conclusions of law whether or not the activities of any "active" attorney-principal should be imputed to other applicant principals in that same law firm under the general tenets of partnership law or the laws of agency.

3. With respect to Solano, the Review Board also ordered that evidence be taken with respect to the *bona fides* of its financial certification. Solano moved on June 7, 1989 for voluntary dismissal of its application, which was granted by the Presiding Judge by *Order* (FCC 89M-1872) released on July 18, 1989. The remand issues designated against Solano have, therefore, been rendered moot, and no further consideration will be given to these issues.

4. A further hearing was held on the remand issues beginning on October 17 and continuing through to October 20, 1989. Pursuant to the Presiding Judge's *Order* FCC 89M-2531, released October 26, 1989, Proposed Findings of Fact and Conclusions of Law were filed by Channel 30 and Inland on December 18, 1989, and Replies thereto on January 18, 1990.

FINDINGS OF FACT

5. Although the following information with respect to Inland is set forth in the Presiding Judge's earlier decision, for purposes of clarity it will be restated here. Inland is a California limited partnership with the following three general partners: David Duron with a 42.8 percent voting interest and 10 percent of the equity; Robert Navarro with a 28.6 percent voting interest and 6.66 percent of the equity; and Susan Racho with a 28.6 percent voting interest and 6.66 percent of the equity interest. Inland proposes to integrate each of its general partners on a full-time basis into the affairs of its station. As of the "B" cut-off date, Inland had nine limited partners. Their names and equity percentages are as follows:

Pierce O'Donnell	18.24%
Frank S. Kilpatrick	18.24%
Jeffrey S. Gordon	12.16%
Dr. Bart B. Sokolow	9.64%
Paul Wolff	9.64%
George R. Hedges	2.19%
Stephen F. Pflaum	2.19%
Anne B. Roberts	2.19%
Alan Stamm	2.19%

(Inland, Ex. #1; SBBLP, Ex. #6).

6. At the time Inland's application was filed, Pierce O'Donnell and Jeffrey S. Gordon were law partners at a firm trading under the name of O'Donnell and Gordon (Inland, Remand, Ex. #2, p. 23). Stephen Pflaum and George Hedges, who are also Inland limited partners, were associates of the firm and later became partners at O'Donnell and Gordon (Inland, Remand, Ex. #2, pp. 23-24). Still another limited partner, Anne Roberts, began working as an associate at O'Donnell and Gordon in 1982 and in 1984 became a partner (Tr. 5193-97; Inland, Remand, Ex. #2, p. 24). Alan Stamm, another limited partner, worked at O'Donnell and Gordon as "of counsel". Paul Wolff is a partner in the Washington, D.C. law firm of Williams and Connolly (Inland, Remand, Ex. #3, p. 4).

7. The decision to file an application on behalf of Inland for the channel 30 facility in San Bernardino, California was formed at a meeting held on April 5, 1983, attended by the Messrs. Kilpatrick and O'Donnell and Anne Roberts, along with an Inland non-principal, Mike Parker (Channel 30, Remand, Ex. #16, p. 1-2; Channel 30, Remand, Ex. #97). After Mr. Parker was unsuccessful in securing a suitable general partner for Inland (Tr. 5227; Channel 30, Remand, Ex. #16, pp. 2-3), Mr. O'Donnell sought out and spoke to David Duron about becoming a general partner (Channel 30, Remand, Ex. #16, pp. 2-3). A memorandum dated April 27, 1983 from Pierce O'Donnell to Messrs. Gordon, Kilpatrick, Sokolow and Wolff, with copies to Inland's communications counsel and Anne Roberts, indicates that Mr. O'Donnell was forming a California limited partnership in order to apply for the channel 30 facility (Channel 30, Remand, Ex. #1). The memorandum further states that Mr. O'Donnell has successfully recruited, as general partner and general manager, David Duron, and that Mr. Duron was in the process of recruiting between two and four other individuals to serve as Inland's general partners (Channel 30, Remand, Ex. #1). Mr. Duron did in fact recruit the other general partners and Mr. O'Donnell secured Inland's limited partners (Tr. 4595), most of whom were at the time associated with the firm of O'Donnell and Gordon. Mr. Duron did not recruit any of the limited partners (Tr. 4595). The aforementioned memorandum further indicates that the equity in Inland had already been distributed by the limited partners before Mr. O'Donnell recruited Mr. Duron (Channel 30, Remand, Ex. #1) and that the decision had already been made to retain the firm of Schnader, Harrison, Segal and Lewis (Schnader, Harrison) as communications counsel for Inland (Channel 30, Remand, Ex. #1, Tr. 2741-42).

8. Although Anne Roberts testified that Mr. Duron played a part in reaching the decision as to the legal status of the applicant (Inland, Remand, Ex. #4, p. 9), it appears from the testimony of Robert Navarro, another Inland general partner and Mr. Duron, that Pierce O'Donnell and Ms. Roberts made it clear from the very outset that Inland would be a limited partnership, and that Mr. Navarro at least was given no opportunity to disagree (Tr. 2712); and that the limited partnership for-

mat was chosen for the limited partners benefit more than anything else (Inland, Remand, Ex. #1, p. 12). Although Mr. Duron denies that the limited partners played any role in reaching the decision as to the amount of equity which would be held by the general partners, he could not explain how or why he received only a 10 percent equity interest instead of a larger share (Inland, Remand, Ex. #1, p. 40; Tr. 4608).

9. David Duron testified that he set up Inland's checking account with the help of Anne Roberts (Inland, Remand, Ex. #1, p. 71). The evidence of record indicates, however, that Sandra Harris, an O'Donnell and Gordon legal assistant, opened Inland's checking account (Tr. 4625; Channel 30, Remand, Ex. #30; Inland, Remand, Ex. #4, p. 73). Mr. Duron also claims that he selected Inland's local counsel Gresham, Varner, Savage, Nolan & Tilden (Gresham, Varner) (Tr. 4608; Inland, Remand, Ex. #1, pp. 45-46) at the suggestion of someone whose name he no longer recalls (Tr. 4609). The actual retainer letter confirming the firm's status as local counsel, however, was written by Anne Roberts (Tr. 5235; Channel 30, Remand, Ex. #100; Inland, Remand, Ex. #4, pp. 79-80), and it contains a request that any mail received by the firm be mailed to her for forwarding to Mr. Duron (Channel 30, Remand, Ex. #100). Ms. Roberts was also responsible for forwarding documents to local counsel (Tr. 5236, 5247; Channel 30, Remand, Ex. # 103). Although Mr. Duron knew that local counsel rendered bills, he did not know to whom they were sent or how he got copies of them (Tr. 4610). The evidence of record demonstrates that the firm's bills were sent to Pierce O'Donnell (Tr. 4305-06; Channel 30, Remand, Ex. #9), and there is nothing in the record to show that any bill for local counsel was addressed to anyone of the general partners.

10. According to the evidence of record, Mr. Duron relied on the financial statement prepared by Pierce O'Donnell in certifying Inland's financial qualifications (Inland, Remand, Ex. #1, pp. 101-103). He made no effort on his own to confirm the arrangement, and in fact was unsure of the name of the lending institution (Inland, Remand, Ex. #1, pp. 101-103), the terms under which financing would be made available to Inland, whether or not any security would be required, and whether the funding would be in the form of a loan (Inland, Remand, Ex. #1, pp. 171-172). As to the Inland application itself, Ms. Roberts gave Mr. Duron an application which was signed in blank form and forwarded to communications counsel just four days prior to its filing (Tr. 5232; Channel 30, Remand, Ex. #99; Inland, Remand, Ex. #4, p. 68). Inland's application was completed, and Ms. Roberts reviewed it and it was filed with Commission (Inland, Remand, Ex. #4, p. 15). The partnership's books and records were kept at the law offices of O'Donnell and Gordon, and Mr. Duron kept Inland's financial records.

11. Pierce O'Donnell admits that O'Donnell and Gordon performed prefiling work for the partnership. He denies, however, that the firm supplied any other legal services for Inland (Inland, Remand, Ex. #2, pp. 22, 25). The evidence of record includes, however, certain O'Donnell and Gordon time sheets which list charges for services performed for Inland by Mr. O'Donnell and Ms. Roberts which predate the filing of Inland's application continuing on through December 1987 when the firm was dissolved (Channel 30, Remand, Ex. #s 28, 29, 133). The record also includes copies of bills mailed to Inland by O'Donnell and Gordon, many of which reflect charges for attorney's fees and expenses (Channel 30, Remand, Ex. #s 52, 54). The time sheets clearly indicate that both Mr. O'Donnell and Ms. Roberts, as well as other attorneys and paralegals associated with the firm, performed a wide variety of legal services for Inland including reviewing and revising documents and pleadings, drafting memoranda, conferring with Inland's counsel and its general partners; and that they were engaged in settlement negotiations, planned strategy and otherwise acted in a legal capacity for Inland from 1983 through and including, at the very least, the year of 1987. A number of these entries also indicate that Paul Wolff, another limited partner but not connected with the firm of O'Donnell and Gordon, was also involved in planning strategy for Inland, in settlement negotiations with competing applicants, and in the review of the cost and quality of legal services provided by other law firms retained by Inland.

12. Ms. Roberts described her role for Inland as that of a coordinator of materials or a "clearing house" for Inland (Tr. 5213-14). The record shows, however, that she performed more substantive work than that. For example, she discussed the merits of the competing applications with Inland's counsel, conducted settlement negotiations, drafted capital calls, and kept the other principals informed of the hearing's progress (Tr. 4657-58, 4661; Inland, Remand, Ex. #4, pp. 22-23). In addition, she regularly prepared and sent materials to Mr. Duron (Tr. 5260) which were then signed by Mr. Duron and returned to her (Inland, Remand, Ex. #4, p. 73). Although Mr. Duron was unable to recall that anyone prepared documents for his signature (Tr. 4620), he admitted that most of the Inland's documents addressed to Schnader, Harrison were first mailed to Anne Roberts (Inland, Remand, Ex. #4, p. 22) who reviewed them and made some changes. Mr. Duron wrote checks in payment of the partnership's bills and mailed them to O'Donnell and Gordon for posting to Inland's creditors (Tr. 4612, 4675; Channel 30, Remand, Ex. #s 45, 108; Inland, Remand, Ex. #4, pp. 242-43. The bills, however, were first reviewed by Ms. Roberts who then sent them on to Mr. Duron with instructions as to the amount of the check (Tr. 4610, 4623, 4647, 4685-86, 5291-92; Channel 30, Remand, Ex. #s 47, 59, 60, 107, 121; Inland, Remand, Ex. #4, pp. 113-117). Ms. Roberts, along with her secretary, drafted the cover letter transmitting payment using Duron's name and even signed his name to a letter and other documents (Tr. 4671-72, 5316-19; Channel 30, Remand 42-44). Mr. Duron could not recall authorizing Ms. Roberts to sign his name (Tr. 4667). On at least one occasion, Ms. Roberts forwarded to Inland a check under her own name with a breakdown of payment and charges with a promise to send another payment (Tr. 5266; Channel 30, Remand, Ex. #108.) Still other bills for services performed for Inland were addressed to Pierce O'Donnell (Channel 30, Remand, Ex. #s 7-9, 38) and on at least one occasion, Mr. O'Donnell paid Schnader, Harrison directly for services performed for Inland, with a copy of the letter to another limited partner, Paul Wolff (Tr. 4313; Channel 30, Remand, Ex. #10). Mr. Wolff made some capital payments directly to Schnader, Harrison (Tr. 4990; Inland Empire, Remand, Ex. #3, p. 15).

13. From the evidence of record, it is clear that Ms. Roberts performed a number of other services for the partnership. For example, she prepared divestiture commitments for Inland's general partners as well as the

supporting affidavits. She also discussed the limited partners' divestiture commitments with communications counsel (Inland, Remand, Ex. #4, pp. 95-96, 123) and kept the limited partners informed of developments regarding Inland's application (Tr. 4317, 4999-5000; Channel 30, Remand, Ex. #26; Tr. 4663; Tr. 4997, Tr. 5025). In addition, Ms. Roberts reviewed and analyzed cases sent to her by communications counsel (Tr. 5286; Inland, Remand, Ex. #4, pp. 228-229); performed legal research for Inland (Tr. 5288-89; Channel 30, Remand, Ex. #119); assisted in the preparation of Inland's Proposed Findings of Fact and Conclusions of Law (Tr. 5267-68; 5271-72; 5283-84; Inland, Remand, Ex. #4, pp. 258-259; Channel 30, Remand, Ex. #28, pp. 10-11) without, allegedly, Mr. Duron's authorization (Tr. 4695); and prepared amendments to Inland's application which were sent to Mr. Duron for his signature and then forwarded to counsel for filing (Tr. 5295-97; Channel 30, Remand, Ex. #31; Inland, Remand, Ex. #4, pp. 141-142, 167, 260-261, 285). On at least one occasion, Ms. Roberts' secretary sent communications counsel an amendment with instructions as to its filing deadline (Channel 30, Remand, Ex. #123).

14. Ms. Roberts also met with the accountants retained by Inland at the offices of O'Donnell and Gordon, when Mr. Duron was not present (Inland Empire, Remand, Ex. #4, pp. 169-170, 261-3, 281; Channel 30, Remand, Ex. #133, p. 88). The accountants picked up Inland's business records at O'Donnell and Gordon and Inland's financial records and accounts which were sent to O'Donnell and Gordon by Mr. Duron during the first quarter of each year (Tr. 5298), and their bills were mailed to Anne Roberts (Inland, Remand, Ex. #4, pp. 204-5, 302-306; Channel 30, Remand, Ex. #46) who in turn sent the bills to Mr. Duron with recommendations for their disposition.

15. Ms. Roberts clearly involved herself to a significant extent in the prosecution of Inland's application. As noted above, she reviewed copies of the competing applications (Tr. 5242; Inland, Remand, Ex. #4, pp. 82, 94; Channel 30, Remand, Ex. #133, pp. 16, 27), helped communications counsel prepare an analysis of the competing applicants (Tr. 5243), "probably" reviewed and made changes in all petitions to enlarge issues filed by Inland (Inland, Remand, Ex. #4, pp. 135-136), and assisted in preparing a reply to an opposition to a motion for leave to amend filed by Inland. She also participated in a review of Inland's integration and diversification statements (Inland, Remand, Ex. #4, p. 138), played a role in preparing Inland's responses to written interrogatories by compiling information provided by the general partners and by helping to draft the answers (Tr. 5249-50, Inland, Remand, Ex. #4, p. 160; Channel 30, Remand, Ex. #s 62, 63, 104). Ms. Roberts also worked on the supplementary answers to interrogatories (Inland, Remand, Ex. #4, p. 182), spearheaded the production of documents, and drafted a memorandum to Inland's general partners explaining the procedure and time table for document production (Inland, Remand, Ex. #4, p. 175; Channel 30, Remand, Ex. #65). She then personally collected many or most of the documents pursuant to the document request and gathered the other documents supplied by the general partners (Channel 30, Remand, Ex. #65; Inland, Remand, Ex. #4, pp. 174-179). Ms. Roberts also reviewed and revised Inland's direct case exhibits, sent copies of these exhibits to the general partners and then sent affidavits to the general and limited partners to support their direct case exhibits (Tr. 4631-32; Channel 30, Remand, Ex. #34, Inland, Remand, Ex. #4, pp. 187-188). On June 13, 1984, Ms. Roberts sent Mr. Duron a memorandum (Channel 30, Remand, Ex. #36) which asks for reimbursement for expenses in preparing direct case exhibits as well as Inland's answers to interrogatories. She also made a number of trips to Washington, D.C. in connection with Inland's application (Tr. 5326) allegedly without Mr. Duron's authorization (Tr. 4637, 4638), attended meetings at O'Donnell and Gordon where the general partners prepared for the hearing (Tr. 4634-36; Channel 30, Remand, Ex. #54, p. 7; Channel 30, Remand, Ex. #133, pp. 121, 123, 128), and she discussed hearing testimony with both Pierce O'Donnell and Bart Sokolow, another limited partner (Channel 30, Remand, Ex. #133, pp. 129-133). She also distributed potential hearing questions to the general partners that had been prepared by communications counsel and kept them informed of relevant matters prior to the hearing. During the course of the hearing, Ms. Roberts met with all of Inland's general and limited partners and discussed the testimony, as well as the progress of the hearing (Inland, Remand, Ex. #4, p. 195). One of the O'Donnell and Gordon time sheets includes an entry of 10 hours for Ms. Roberts' trip to Washington, D.C. to prepare Inland's witnesses for the comparative hearing (Channel 30, Remand, Ex. #133, 131; Inland, Remand, Ex. #4, pp. 197-198).

16. Ms. Roberts reviewed and edited Inland's proposed findings of fact on the so-called A&R Broadcasting Company, A Limited Partnership (A&R) issue in March of 1986 and revised a draft of Inland's findings on SBBLP in April of 1986 (Tr. 5267, 5283-84; Channel 30, Remand, Ex. #118). She also spoke with Paul Wolff several times with respect to these proposed findings and incorporated his comments into her revision (Tr. 5268-72, 5284; Channel 30, Remand, Ex. #109); Inland, Remand, Ex. #4, p. 286). In addition, Ms. Roberts edited Inland's proposed findings with respect to its own application (Inland, Remand, Ex. #4, pp. 258-59). She also worked with Nixon, Hargrave, Devans and Doyle (Nixon, Hargrave) on Inland's findings and conclusions on the so-called Mike Parker issue (Tr. 4444, 5272-73), and she edited and revised drafts of the Nixon, Hargrave pleading, and demanded time to approve the final document (Inland, Remand, Ex. #4, pp. 287-289; Channel 30, Remand, Ex. #118) which action was taken, according to her testimony, at Mr. Duron's request (Tr. 5274). Schnader, Harrison on December 8, 1987 sent drafts of Inland's exceptions to Paul Wolff (Channel 30, Remand, Ex. #81; Tr. 5002-03) and to Ms. Roberts, along with a request that Ms. Roberts call and discuss the draft (Channel 30, Remand, Ex. #81).

17. William Andrews of Nixon, Hargrave was retained by Inland to prosecute the so-called Mike Parker issue designated by the Presiding Judge in this proceeding. His initial contact with Inland was through Ms. Roberts with whom he discussed the issue itself and the nature and conditions of the law firm's representation (Tr. 4408-10, 5032, 5313-14). The evidence of record indicates that Mr. Duron was not a party to this conversation (Tr. 4410). The substance of this conversation between Mr. Andrews and Ms. Roberts was confirmed by letter dated January 18, 1985 from Mr. Andrews to Ms. Roberts (Tr. 5032, 5314; Channel 30, Remand, Ex. #82). Ms. Roberts served as go-between the Messrs. Andrews and Duron (Tr. 5032),

and Nixon, Hargrave's bills were sent to her in care of O'Donnell and Gordon. After Ms. Roberts reviewed the bills, they were forwarded to Mr. Duron (Inland, Remand, Ex. #4, p. 231).

18. Mr. Andrews testified that he viewed Ms. Roberts as serving as Inland's local counsel (Tr. 4423-24), and that he was advised by Ms. Roberts that she was coordinating matters for Inland and would comment on any drafts prepared by his firm (Tr. 4414). He also indicated that the majority of his contacts with Inland were with Ms. Roberts (Tr. 4424) and that his firm forwarded pleadings and other documents to Ms. Roberts at her request (Tr. 4413, 5275, 5290; Channel 30, Remand, Ex. #s 110-112), and that Ms. Roberts made both stylistic and substantive changes in the documents sent to her (Inland, Remand, Ex. #4, pp. 231-32). In addition, she assisted Nixon, Hargrave in planning its strategy for prosecuting the application (Tr. 4415, 4441-42, 4443), and she kept in frequent contact with the firm on matters relating to Inland's application (Tr. 5039-42; Channel 30, Remand, Ex. #s 85, 86). During the several days of hearing on this issue, Ms. Roberts attended several sessions at Mr. Duron's direction (Tr. 4419, 5322, 5335, 5345-46), planned strategy for prosecuting this issue with Nixon, Hargrave (Tr. 5321-22; Inland, Remand, Ex. #4, p. 249) and reviewed pleadings and other documents, and also conferred with Nixon, Hargrave on other Inland matters (Inland, Remand, Ex. #4, pp. 249, 301; Tr. 5322). The record indicates that Ms. Roberts was reimbursed by the partnership for her expenses (Inland, Remand, Ex. #4, pp. 298-300). According to Mr. Andrews, Mr. Wolff was also in contact with Nixon, Hargrave concerning the so-called Mike Parker issue, and he too was involved in planning strategy (Tr. 4418-4419). Both Ms. Roberts and Mr. Andrews spoke with Paul Wolff during the course of these hearings sessions (Tr. 4418), and Ms. Roberts and Mr. Wolff received copies of Nixon, Hargrave's draft findings of fact and conclusions of law with respect to this issue (Tr. 5326-29; Channel 30, Remand, Ex. #75).

19. Pierce O'Donnell, in a letter transmitting an O'Donnell and Gordon bill to Mr. Duron, referred to the enclosed statement as a bill for legal services (Inland, Remand, #2, p. 101). He admitted that his firm had coordinated discovery and assisted in the preparation of Inland's case for hearing (Tr. 4392). He mentioned specifically that he had reviewed some of Inland's pleadings prior to the time they were filed, and had read the pleadings filed by the other applicants (Tr. 4354; Inland, Remand, #2, pp. 114-115). Mr. O'Donnell also reviewed Schnader, Harrison's bills at Mr. Duron's request (Tr. 4344) and occasionally called to discuss the reasonableness of the billing, including the amount of time spent on the matter (Tr. 4340, 4733). After reviewing the bills, Mr. O'Donnell forwarded copies of these bills to Mr. Wolff, Ms. Roberts and Mr. Duron (Tr. 4339).

20. The firm of O'Donnell and Gordon was dissolved on December 31, 1987 (Tr. 5211). All of the attorneys who had been at O'Donnell and Gordon, including Pierce O'Donnell, were invited to work at the firm of Kaye, Scholer, Fierman, Hays & Handler (Kaye, Scholer) (Tr. 5212), and this firm assumed, according to Inland, the clearing house functions previously performed by Ms. Roberts (Tr. 4706, 4711). Mr. Duron indicated that Mr. O'Donnell, who is presently at Kaye, Scholer, is his contact person with the firm. Mr. O'Donnell met with communications counsel, Mr. Duron and Ms. Roberts at the offices of Kaye, Scholer (Kay, Scholer) to discuss document production (Tr. 4353) and met again with these individuals prior to the taking of depositions for the remand hearing. The record further demonstrates that Mr. O'Donnell has kept abreast of the progress of Inland's application, and that he has spoken with Mr. Duron as well as with the firm of Schnader, Harrison about the application (Inland, Remand, #2, p. 30). In addition Mr. O'Donnell testified that he socializes, on a regular basis, with Inland's communications counsel and at times discusses the Inland application (Tr. 4315). Mr. O'Donnell has also read filings submitted by the other applicants, and has spoken with both Ms. Roberts and Mr. Wolff concerning Inland matters (Inland, Remand, #2, p. 30). He has also kept up with the progress of settlement negotiations, attended settlement meetings, and discussed settlement with the firm of Schnader, Harrison (Inland, Remand, #2, pp. 31-32).

21. Paul Wolff reviewed and commented on Inland's findings of fact, and his remarks were incorporated into Ms. Roberts' revisions of Inland's findings (Tr. 4992-94; Channel 30, Remand, #109). Mr. Wolff, at communications counsel's suggestion, reviewed the major documents filed by Inland in this proceeding in order to familiarize himself with the type of work they were doing and he supplied written comments on those pleadings which he reviewed (Inland, Remand, #3, p. 33). He also had long conversations with Schnader, Harrison regarding the application process and related matters (Tr. 4969-70; Inland, Remand, #3, pp. 6-7, 26), and with Anne Roberts regarding the status of the Inland's application (Inland, Remand, #3, 27).

22. Mr. Wolff became concerned with the size of Nixon, Hargrave bill (Tr. 4982-83), and he discussed this matter with both Mr. O'Donnell, Ms. Roberts and Mr. Duron on several occasions (Tr. 4978, 5006). His concerns were shared by Mr. O'Donnell, (Tr. 4286) who asked Nixon, Hargrave for an itemized bill (Tr. 4446).

23. When the decision was made to litigate the dispute over the amount of Nixon, Hargrave's bill, Mr. Wolff, at Mr. O'Donnell request, was asked to recommend suitable counsel to the general partner (Tr. 5007-08). Mr. Donnell, however, was the one who actually made the contact with counsel (Tr. 4283), and the retainer letter between the law firm Keck, Machin & Cate and Inland dated January 17, 1989 was addressed to Pierce O'Donnell at Kaye, Scholer with a copy to Mr. Wolff (Channel 30, Remand, #2). The firm sent copies of its pleadings and memoranda to Mr. O'Donnell and Mr. Wolff (Tr. 4290-91; 4295-96; Channel 30, Remand, #5; Inland, Remand, #2, pp. 62-63), and Mr. O'Donnell discussed the law suit and possible litigation strategy with the firm (Tr. 4292-93). At one point, the law firm sent Pierce O'Donnell a memorandum concerning the law suit to bounce ideas off of him (Tr. 4296). Mr. O'Donnell testified that he also received copies of documents directly from the firm because he was asked by Mr. Duron to advise him about the law suit (Tr. 4300-01; Channel 30, Remand, #8). The firm's bills were sent to Mr. O'Donnell at his office at Kaye, Scholer (Channel 30, Remand, #7), and on at least one occasion, counsel wrote to Mr. O'Donnell updating him on the litigation and asking him to have the enclosed bill brought up to date (Tr. 4301). According to the testimony of record, the Messrs. Wolff and O'Donnell guaranteed payment of the firm's fees (Tr. 4288, 5013).

24. Mr. Duron was unable to indicate who actually prepared Inland's capital calls (Tr. 4691-92), but testified that Ms. Roberts assisted in drafting these calls (Tr. 4693-94). The record demonstrates that Anne Roberts drafted the capital calls, and that she computed the amounts due from the various partners (Tr. 4323, 5253-54, 5257-58, 5319; Inland, Remand, #4, pp. 195-6; Channel 30, Remand, #133, pp. 119-120; Inland, Remand, #4, 232). She then collected the checks and forwarded them to Mr. Duron (Tr. 4698; Channel 30, Remand, #107; Inland, Remand, #4, pp. 200-204; 211-12). After 1987, Inland's capital calls were prepared at Mr. Duron's direction by an unidentified person at Kaye, Scholer (Tr. 4702-06).

25. Inland's partnership meetings, after its application was filed with this Commission, were held at O'Donnell and Gordon (Tr. 4597). Settlement negotiations between Inland and competing applicants included Anne Roberts, Pierce O'Donnell, Paul Wolff and communications counsel (Channel 30, Remand, #38). Inland was represented at settlement negotiations with A&R Broadcasting only by Mr. Wolff and communications counsel (Tr. 4986) and with another applicant, Solano Broadcasting Limited, Mr. O'Donnell was also present (Tr. 4375-76). Although there were other settlement negotiations which he did not attend, Mr. O'Donnell testified that he was apprised of the substance of those meetings (Inland, Remand, #2, pp. 31-32; Channel 30, Remand, #18), and that he discussed settlement in general terms with Inland's communications counsel (Inland, Remand, #2, 32). A memorandum dated November 30, 1984, from Ms. Roberts to Mr. O'Donnell outlines the progress of settlement negotiations (Channel 30, Remand, #15, Inland, Remand, #4, pp. 233-36), and it reflects that communications counsel and Mr. Wolff made a specific proposal (Channel 30, Remand, #15), and that Mr. O'Donnell would represent Inland in subsequent negotiations with A&R Broadcasting (Channel 30, Remand, #15). Apparently, Mr. Duron did not authorize Mr. Wolff to represent Inland in any settlement negotiations (Tr. 4620), and a memorandum from Ms. Roberts dated August 27, 1987 to Pierce O'Donnell indicates that Mr. Duron was upset because he was not included in settlement negotiations (Channel 30, Remand, #18).

CONCLUSIONS OF LAW

26. In an attempt to meet its burden of proof with respect to the matter raised by the Review Board, Inland presented the testimony of three of its limited partners, Anne Roberts, Pierce O'Donnell, and Paul Wolff. As the above summary of the evidence of record taken at the further hearing session clearly demonstrates, these three individuals have been actively involved in the affairs of Inland from its inception until at least 1987 to a degree that raises serious questions as to whether or not the general partners themselves were, either individually or collectively, involved to any significant degree in prosecuting Inland's application. The only general partner who appears to have been a participant is Mr. Duron. However, the evidence of record, as supplemented, makes it abundantly clear that Ms. Roberts, in conjunction with Messrs. O'Donnell and Wolff, formed, then took and retained actual control of the enterprise, and that Mr. Duron was little more than a figure head during the entire process.

27. Although the undersigned and the Review Board made it clear that in order to meet its burden of proof, Inland would have to present the testimony of all of its limited partners who were connected with the firm of O'Donnell and Gordon, it chose not to do so and it did not present the testimony of Inland's limited partners George R. Hedges, Steven F. Pflaum, Jeffery S. Gordon and Alan Stamm. Its failure to do so warrants the conclusion that Inland has not met its burden of proof with respect to those partners. Accordingly, the equity interests of the Messrs. Hedges, Pflaum, Gordon and Stamm which total 18.17 percent must be attributed to Inland for purposes of calculating its entitlement to quantitative integration credit.

28. Inland's limited partners formed a legal entity to pursue the San Bernardino broadcast facility. They decided that its legal status would be that of a limited partnership, that they would be the limited partners, and that the general partners would all be members of a recognized minority group. The limited partners selected the principal general partner, David Duron, and all of the limited partners. In addition, they recruited communications counsel, and selected all other legal counsel, as well as the other professionals hired by Inland. Mr. Duron was included in these processes only to the extent that the managing general partner was required to make the arrangement legally binding. The limited partners also assumed the responsibility of communicating with these professionals on a regular basis. Their bills, with the exception of those issued by O'Donnell and Gordon, were mailed to the limited partners who in turn referred the bills to Mr. Duron for payment often with instructions as to the method of their payment. When a dispute arose as to the size of a bill for legal services, it was the limited partners who complained about the amount and then attempted to resolve the dispute and when these attempts failed and the general partners were sued for nonpayment, they secured legal counsel.

29. The limited partners, collectively, also provided extensive legal services to the partnership. Initially, they prepared and amended Inland's partnership documents and other organizational papers. Subsequently, they prepared amendments to Inland's application, and reviewed and revised pleadings before they were filed on behalf of Inland. In addition, they planned Inland's strategy for prosecuting its application with communications counsel, conducted legal research, wrote legal memoranda, prepared responses to written interrogatories, assisted in assembling documents to be produced pursuant to discovery requests, and aided in preparing Inland's witnesses for their testimony at the hearing. The limited partners were also involved in drafting Inland's integration proposal, diversification statement and direct case exhibits, and they received copies of the pleadings submitted in this proceeding by the other applicants. The Messrs. O'Donnell and Wolff and Ms. Roberts regularly discussed Inland matters amongst themselves and with communications counsel, and when the decision was made to pursue the possibility of settlement, they took the primary role in pursuing settlement to an extent that the managing general partner was not even invited to participate in the negotiations. The O'Donnell and Gordon time sheets and billing summaries, along with letters and other documents which form a part of this record bear witness to the fact that legal services were provided by these three individuals from the applicant's inception until, at the very least,

1987. Whether or not these services were paid for is irrelevant since not being paid for services rendered does not make those services any less legal.

30. The involvement of Inland's limited partners extends into the area of Inland's financial matters. Despite Mr. Duron's protestations to the contrary, he appears to have been totally uninvolved in the financial aspects of the application. For example, Mr. Duron did not know who had given Inland the assurance of the necessary financing. He relied instead on Mr. O'Donnell's representation that Inland had a reasonable assurance of financing. He was also unsure as to who opened Inland's bank account and where he got the signature cards, and, finally, he left the preparation of Inland's capital calls to someone else. The extent of his involvement in Inland's financial matters appears to have been limited to signing checks at the direction of Ms. Roberts. Whereas, the record demonstrates that the limited partners secured Inland's financing, selected its accountants and law firms, and in some instances even paid its bills directly. In addition, Ms. Roberts computed and wrote capital calls, and for the most part, received, reviewed and arranged for the payment of Inland's bills.

31. Inland's arguments that Ms. Roberts functioned merely as a clearing house and that Messrs. O'Donnell and Wolff did no more than what a prudent investor would do in keeping track of his investment are not supported by the evidence of record. Clearly, Ms. Roberts' activities on behalf of Inland far exceeded in importance those normally associated with a clearing house; and that the limited partners, collectively, exercised what amounts to a virtually absolute dominance over Inland's affairs. Mr. Duron's attempt to show a significant involvement on his part in Inland's affairs is not supported by the evidence of record, and, in final analysis, calls into question his overall credibility. Simply stated, his protestations to the effect that he made a number of significant decisions with respect to Inland cannot be credited after an objective examination of the record. The evidence before us illustrates clearly that Ms. Roberts and the Messrs. Wolff and O'Donnell were the prime movers in this enterprise, and acted in a manner inconsistent with their claim to be effectively insulated from active involvement in Inland's affairs. Accordingly, all of their equity interests, totaling 30.07 percent, must be recognized in computing the amount of quantitative integration credit to which Inland is entitled.

32. In view of Inland's failure to present its other limited partners, the question of mutual imputation of the actions of Ms. Roberts and the Mr. O'Donnell to the other limited partners who were associated with the firm of O'Donnell and Gordon is moot. Nevertheless, it is clear that in this instance, the legal services performed for Inland by Ms. Roberts and Mr. O'Donnell would be imputed to the non-appearing limited partners who were also members of that firm. To conclude otherwise would be to permit a limited partner to avoid attribution simply by assigning certain responsibilities and/or duties to a designated employee or agent.

33. Accordingly, the Presiding Judge concludes that Inland's quantitative integration credit must be reduced by, at the very least, the sum total of the equity held by Ms. Roberts and the Messrs. O'Donnell, Gordon, Hedges, Pflaum, Stamm and Wolff or 48.24 percent; and that Inland should not receive a quantitative integration credit which exceeds 23.22 percent, or the sum total of the equity interests held by the Messrs. Duron and Novarro and Ms. Racho.

34. IT IS ORDERED that the *Initial Decision* released in this proceeding on October 30, 1987 IS SUPPLEMENTED to include the additional Findings of Fact and Conclusions of Law set forth above; and that the *Initial Decision* to the extent that it is inconsistent with the findings and conclusions reached herein IS VACATED and SET ASIDE.[1]

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Gonzalez
Administrative Law Judge

FOOTNOTE

[1] In the event exceptions are not filed within 30 days after the release of this Supplemental Initial Decision, and the Commission does not review the case on its own motion, this Supplemental Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 83-1009

In the Matter of

Amendment of Section 73.3555
(Formerly Sections 73.35,
73.240, and 73.636) of the
Commission's Rules Relating
to Multiple Ownership of AM,
FM and Television Broadcast
Stations

ORDER

Adopted: August 17, 1990; Released: August 27, 1990

By the Chief, Mass Media Bureau:

1. On February 1, 1985, the Commission decided to permit an exception to the national multiple ownership rules to allow certain incentives for minority ownership.[1] On March 4, 1985, the American Legal Foundation (ALF) filed a petition for reconsideration of this decision.[2] The Commission deferred ruling on this petition until the decision of the United States Supreme Court in *Metro Broadcasting, Inc. v. Federal Communications Commission*.[3] On July 18, 1990, the Mass Media Bureau asked, via certified mail, return receipt requested, that ALF state within 15 days whether, in light of the *Metro Broadcasting* decision, it still wished to prosecute its petition.[4] The Bureau Letter stated that if ALF did not respond, its petition would be dismissed. Receipt of the Bureau Letter was acknowledged on July 19, 1990. ALF did not respond within the 15-day time period stated in the Bureau Letter.

2. Accordingly, IT IS ORDERED that the Petition for Reconsideration of the American Legal Foundation IS DISMISSED.

3. IT IS FURTHER ORDERED THAT the Secretary of the Commission SHALL SEND a copy of this Order certified mail, return receipt requested, to the American Legal Foundation.

4. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

FOOTNOTES

[1] The Commission allowed entities to acquire up to a maximum of 14 AM, 14 FM and 14 TV stations provided that at least two of the stations in each service are minority controlled. In addition, entities with cognizable interests in minority television stations are allowed to reach up to 30 per cent of the national audience, provided that at least 5 percent of their audience reach emanates from minority-controlled stations. Memorandum Opinion and Order, Gen. Docket No. 83-1009, 100 FCC 2d 74, 94-95 (1985), *appeal pending sub nom.* Nat'l Ass'n of Black Owned Broadcasters, Inc. v. FCC, Case No. 85-1139 (D.C. Cir.) (filed Mar 4, 1985). This exception was adopted on reconsideration of the order establishing the general national multiple ownership limits of 12 AM, 12 FM and 12 TV stations. Report and Order, 100 FCC 2d 17 (1984). A general 25 percent national audience reach cap also applies to non-minority owners. 100 FCC 2d at 76.

[2] Two parties, National Black Media Coalition, and American Broadcasting Companies, Inc., filed oppositions.

[3] 58 U.S.L.W. 5053 (U.S. June 27, 1990), _____ U.S. _____ (1990).

[4] Letter from Roy J. Stewart, Chief, Mass Media Bureau, to Michael P. McDonald, General Counsel, American Legal Foundation (dated July 18, 1990) (Bureau Letter).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-345

In re Applications of

MARY ELIZABETH SHELTON d/b/a VALLEY RADIO (Hereafter "Radio")	File No. BPH-881128MB
LOUISVILLE COMMUNITY BROADCASTING, INC. (Hereafter "Louisville")	File No. BPH-881129MA
CHRISTY A. HUTTER (Hereafter "Hutter")	File No. BPH-881130MA
RIVER BROADCASTING LIMITED PARTNERSHIP (Hereafter "River")	File No. BPH-881201MB
MID - AMERICA COMMUNICATIONS, INC. (Hereafter "Mid-America")	File No. BPH-881201MC
HIGH LEVEL COMMUNICATIONS, INC. (Hereafter "High Level")	File No. BPH-881201MD
RAMCOMM (Hereafter "RamComm")	File No. BPH-881201ME
SHARON LEE OLSEN (Hereafter "Olsen")	File No. BPH-881201MG
JERRY L. EAVES (Hereafter "Eaves")	File No. BPH-881201MH
D. E. W. COMMUNICATIONS LIMITED PARTNERSHIP (Hereafter "D.E.W.")	File No. BPH-881201MF [Dismissed Herein]

For Construction Permit for
New FM Station, Channel 290A,
105.9 MHZ in
Valley Station, Kentucky

ERRATUM

Released: August 27, 1990

An opinion paragraph and 3 resultant issues were inadvertently omitted from the text of the Hearing Designation Order in MM Docket No. 90-345, DA 90-1001 (released August 9, 1990) for channel 290A in Valley Station, Kentucky. The order is modified to include the following:

ADDITIONAL OPINION PARAGRAPH

Information before the Commission indicates that Louisville was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Louisville's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Louisville in this proceeding.

ADDITIONAL ISSUES

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Louisville.

2. To determine whether Louisville's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether Louisville possesses the basic qualifications to be a licensee of the facilities sought herein.

Issues previously numbered 1 through 4 are hereby renumbered 4 through 7, respectively.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-367

In re Applications of

GOODHART BROADCASTING, INC. (hereafter "Goodhart")	File No. BPH-880915MH
SOUTHERN SHORE RADIO LIMITED PARTNERSHIP (hereafter "Southern")	File No. BPH-880915MK
TIDEWATER BROADCASTING COMPANY, INC. (hereafter "Tidewater")	File No. BPH-880915NM
BARBARA WALL DU TREIL, d/b/a TIPPITY WICHITY COMMUNICATIONS COMPANY (hereafter "TIPPITY WICHITY")	File No. BPH-880915NN

For Construction Permit
for a New FM Station on Channel 275A
in California, Maryland

HEARING DESIGNATION ORDER

Adopted: August 1, 1990; Released: August 27, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. On April 3, 1990, Tippity Wichity filed a "Petition to Dismiss" Goodhart's application and requested dismissal of that application or, alternatively, an inquiry into Goodhart's financial qualifications. As Tippity Wichity correctly notes, Goodhart failed to certify that it is financially qualified in response to Section III of its original application. On March 13, 1990, Goodhart submitted an amendment to its application to indicate that it has since become financially qualified. Goodhart's application was put on *Public Notice* of acceptance for tender on November 16, 1988, and Goodhart, therefore, had until December 19, 1988 to file amendments as a matter of right. After the close of the amendment as of right period, an applicant cannot file a curative amendment to correct a grantability defect. *See Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). To accept amendments after the close of the amendment as of right period would be unfair to the other applicants in this proceeding, who fully complied with our acceptability and grantability requirements as of the amendment as of right date. *See PrimeMedia Broadcasting, Inc.*, 3 FCC Rcd 4293 (1988); *see also Emmy Hahn Limited Partnership*, 4 FCC Rcd 8336 (1989); *Domega Broadcasting Corporation*, 4 FCC Rcd 1450 (1989). Accordingly, Goodhart's amendment is untimely and will herein be returned. Furthermore, an appropriate issue will be added regarding Goodhart's financial qualifications, and Tippity Wichity's petition will be dismissed as moot.

3. A "Petition to Dismiss" Southern's application was also filed by Tippity Wichity on April 3, 1990. Tippity Wichity charges that Southern's map submitted in response to Item 16, Section V-B of FCC Form 301, contained the proposed contours of the station but did not provide the legal boundaries of California, Maryland; instead, the map contained only an arrow labeled "California" without further identification of the community's legal boundaries. Tippity Wichity's inference that clarity can be achieved solely by drawing the community of license's boundaries on the contour map is erroneous. If the predicted 70 dBu contour, taken in conjunction with a depicted small community, is such that we can confidently and reliably ascertain that there is compliance with the city coverage requirement, we need not insist that the boundaries be outlined. Despite the lack of accurate boundary lines, Southern's contour map is not procedurally incorrect. *See, e.g., Richard Culpepper*, FCC 90-182 (released May 11, 1990). Southern provided a contour map which contained a dot (to which an identifying arrow pointed) which was clearly within its predicted 70 dBu contour. The commission has stated that "it was clearly not the intent of the [FM "hard look" processing] guidelines to penalize applicants arbitrarily if the needed information can be derived from the application as a whole." *Star Signal Corporation*, 1 FCC Rcd 405, 406 (1986). Accordingly, Tippity Wichity's petition to dismiss Southern's application will be denied.

4. A "Petition to Dismiss" Tidewater's application was also filed by Tippity Wichity on April 3, 1990.[1] Tippity Wichity charges that Tidewater's December 16, 1988 amendment to its application did not contain certification as to its use of its newly proposed site; and, the absence of site certification has been specified by the Commission as a basis for rejection of an application. Tippity Wichity cites Appendix D to *Report and Order*, MM Docket No. 84-750, 50 Fed. Reg. 19936 (1985), in support of its allegations. However, the "hard look" policy promulgated in the *Report and Order* does not apply to amendments. *See The Taber Broadcasting Company of New Mexico*, 4 FCC Rcd 7892 (1989). Therefore, Tidewater's failure to file a timely site certification amendment to correct its timely December 16 site change amendment will result in the designation of a site availability issue against Tidewater for reasons analogous to those set forth in paragraph 2 above. In an amendment dated August 10, 1989, Tidewater, *inter alia*, untimely proferred a site certification. Therefore, the August 10, 1989, amendment will be returned insofar as it relates to the above matter.

5. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for

filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Goodhart	March 13, 1990
Tidewater	August 10, 1989; September 20, 1989; April 17, 1990(engineering)
Tippity Wichity	March 23, 1990

6. The Federal Aviation Administration (FAA) has issued a determination of "Hazard" to air navigation with respect to Southern. Accordingly, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Goodhart, whether the applicant is financially qualified.

2. To determine whether Tidewater has reasonable assurance that the transmitter site specified will be available to it.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by Southern would constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the April 3, 1990 Petitions to Dismiss Goodhart's and Tidewater's applications filed by Tippity Wichity ARE DISMISSED AS MOOT, and the April 3, 1990 Petition to Dismiss Southern's application, also filed by Tippity Wichity, IS DENIED.

11. IT IS FURTHER ORDERED, That Goodhart's March 13, 1990 amendment and Tidewater's August 10, 1989 amendment (insofar as it relates to the issue of site availability) ARE HEREBY RETURNED.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Goodhart, Tidewater and Tippity Wichity ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Tidewater filed an opposition to Tippity Wichity's "Petition to Dismiss" on April 24, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-544

In re Applications of

HUGHES-MOORE ASSOCIATES, INC.	File No. BPH-870612MC
HERBERT REGENSTREIF	File No. BPH-870615MI
MIDWAY COMMUNICATIONS, LTD.	File No. BPH-870615MT
BELHOUSE & ASSOCIATES, INC.	File No. BPH-870615MV

For Construction Permit for New FM Station, Midway, Kentucky

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 1990; Released: August 28, 1990

By the Review Board: MARINO (Chairman), and ESBENSEN. Board Member BLUMENTHAL absent.

1. By *Memorandum Opinion and Order*, FCC 90R-46, released June 19, 1990, the Review Board reinstated the application of Midway Communications, Ltd. in this proceeding pursuant to Commission precedent in *St. Croix Wireless Co.*, 3 FCC Rcd 4073 (1988) (applicant reinstated for settlement purposes; dismissal held "unduly harsh" and ALJ there should have accepted late filed notice of appearance) and remanded the case to the presiding Administrative Law Judge "for action consistent with the Commission's mandate in *St. Croix*." On July 19, 1990, Herbert Regenstreif (Regenstreif) filed a petition for reconsideration, claiming, *inter alia*, that the funds he had allocated to Midway for settlement of this proceeding ($15,000) have now been "contributed" to "charity."

2. Regenstreif's petition for reconsideration is specifically precluded by three different provisions of the Commission's Rules. 47 CFR §1.102(b)(2) ("Petitions for reconsideration of interlocutory actions will not be entertained"); 47 CFR §1.106(a)(1) ("Petitions for reconsideration of [non-final] interlocutory actions will not be entertained"); and 47 CFR 1.291(c)(3) ("Petitions requesting reconsideration of an interlocutory ruling made by... the Review Board . . . will not be entertained"). *See also Weyburn Broadcasting Ltd.*, 5 FCC Rcd 1972 (Rev. Bd. 1990). Moreover, pursuant to 47 CFR §1.115(e)(1), further review of the Board's action may only be sought in the context of an application for review of a subsequent "final decision" in this proceeding. *See Valley Broadcasters, Inc.*, FCC 83R-85, released October 21, 1983.

3. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration filed July 19, 1990 by Herbert Regenstreif IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INVESTIGATION OF VIA/NET COMPANIES, AMERICAN DIGITAL CORPORATION, METROPOLITAN DIGITAL, INC., SPECTRATEL, INC., and B. HILLIARD, JR.

File No. ENF-89-12

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Operations
Common Carrier Bureau

ORDER

Adopted: August 20, 1990; Released: August 28, 1990

By the Deputy Chief, Common Carrier Bureau:

1. In June of 1989, M/A-Com, Inc. (M/A-Com), a manufacturer of telecommunications equipment that was involved in litigation with Metropolitan Digital, Inc. (MDI), alleged in a letter that MDI and other Commission licensees owned, controlled and operated by Mr. Carl B. Hilliard, Jr. (Hilliard) had engaged in a "continuing pattern of willful violation of Commission rules," including unauthorized transfers of control and an unreported bankruptcy.[1] The Chief of our Formal Complaints and Investigations Branch instituted this investigatory proceeding and thereafter directed Hilliard to respond to M/A-Com's allegations by December 7, 1989.[2] On January 22, 1990, Hilliard, his wife Sharon E. Hilliard, MDI, American Digital Corporation (ADC) and Spectratel, Inc. (Spectratel) filed their response to M/A-Com's allegations denying that the facts alleged formed a continuing pattern of willful violation of the Commission's rules. [3]

2. The Bureau's Enforcement Division has reached an agreement with Via/Net Companies, ADI, MDI, Spectratel and the Hilliards that would resolve this proceeding, the terms and conditions of which are contained in the attached Consent Decree.

3. We have reviewed the terms of the Consent Decree and evaluated the circumstances of this case. We believe that the public interest would be served by approving the Consent Decree, the terms of which are hereby incorporated by reference.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the Consent Decree, incorporated by reference herein, is hereby adopted.

5. IT IS FURTHER ORDERED that the above-referenced investigation proceeding is hereby terminated.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INVESTIGATION OF VIA/NET COMPANIES, AMERICAN DIGITAL CORPORATION, METROPOLITAN DIGITAL, INC., SPECTRATEL, INC., and CARL B. HILLIARD, JR.

File No. ENF-89-12

CONSENT DECREE

1. In June 1989, the Federal Communications Commission (Commission), by its Common Carrier Bureau's Enforcement Division, instituted an investigation into allegations of M/A-Com, Inc. (M/A-Com), contained in a letter dated June 26, 1989, directed against Carl B. Hilliard, Jr. and/or Commission licensees in which he had direct or indirect ownership interests. Such investigation was concerned with, *inter alia*: frequency warehousing and whether unused radio licenses had been timely submitted for cancellation; the transfer of control over Commission licensees without prior Commission authorization, the failure to timely file annual reports required pursuant to Section 43.72 of the Commission's rules, 47 C.F.R. § 43.72; and other possible violations of the Commission's rules by companies owned, controlled, operated by, or in which Hilliard has a direct or indirect business interest.

2. For purposes of this Consent Decree, the following definitions apply:

(a) "Commission" means the Federal Communications Commission;

(b) "Bureau" means the Commission's Common Carrier Bureau;

(c) "Enforcement Division" means the Common Carrier's Bureau's Enforcement Division;

(d) "Hilliard" means Carl B. Hilliard, Jr. and Sharon E. Hilliard;

(e) "Via/Net Companies" means that company, or any other affiliated entity, subsidiary, or successor controlled directly or indirectly by Hilliard, including American Digital Corporation, Metropolitan Digital, Inc., and Spectratel, Inc.

(f) "Spectratel" means Spectratel, Inc.;

(g) "Order" means the order of the Bureau adopting the terms and conditions of this Consent Decree and formally disposing of the above-captioned proceeding;

(h) "Effective date of this Consent Decree" is the date that the Order adopting the terms and conditions of this Consent Decree is released.

3. Via/Net Companies admits the jurisdiction of this Commission over it and its affiliated companies and over the subject matter of this action for the purposes of this Consent Decree and any Order in recognition of the cost of enforcement efforts which ensure that the radio spectrum is not improperly warehoused but made available for use by the public.

4. Via/Net Companies agree that upon their signing and the signing by the Enforcement Division the provisions of this Consent Decree shall be incorporated by reference in any Order, as described in paragraphs 7 and 10 below, formally adopting this Consent Decree and terminating the proceeding.

5. Via/Net Companies waive any rights they may have to appeal any Order, as described in paragraphs 7 and 10 below.

6. In consideration for the termination of this proceeding in accordance with the terms of this Consent Decree, Via/Net Companies agree to the following terms, conditions and procedures that the parties believe will facilitate a fair and expeditious resolution of the above-captioned proceeding in a manner that would serve the public interest. Via/Net Companies agree to the following terms, conditions and procedures without admitting or denying any of the alleged violations set forth in M/A-Com's letter of June 26, 1989 which led to this proceeding, or admitting any other violations of law, rules or policy.

(a) Via/Net Companies agree to make a voluntary contribution to the United States Treasury, without further protest, or recourse to a trial *de novo*, in the amount of $5000 within 5 days of the date on which the Order is released.

(b) Spectratel agrees to surrender its license for station KNKC943 (San Diego, California) for cancellation within 5 days of the date on which the Order is released.

(c) Via/Net Companies agree that henceforth they will timely comply with Sections 43.72 and 22.303 of the Commission's rules.

7. In light of the covenants and representations contained in paragraphs 3-6, *supra*, and in express reliance thereon, the Enforcement Division agrees that this document serves to resolve all issues arising from allegations of violations of Commission rules by Via/Net Companies that are the subject of the letter on behalf of M/A-Com to the Bureau dated June 26, 1989. If this Consent Decree is adopted by Order of the Bureau, such adoption shall constitute a decision to terminate the File No. ENF-89-12 investigatory proceeding without any finding of violation or liability on the part of Via/Net Companies, other than violations admitted by Via/Net Companies or their counsel. By such Order, the Bureau would further agree that the allegations and other circumstances involved in the said M/A-Com letter or the April 6, 1990 letter from Via/Net Companies' counsel to the Bureau will not be used against Via/Net Companies, or any station licensed to, authorization held by, or application filed by Via/Net Companies in any current or future proceeding before the Bureau.

8. Via/Net Companies agree that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. Via/Net Companies and the Enforcement Division further agree that the effectiveness of this Consent Decree is expressly contingent upon termination of the File No. ENF-89-12 proceeding, issuance of an Order as described herein, and Via/Net's compliance with the terms and conditions in paragraphs 3-6, 8 and 10. If the Consent Decree is not signed by both parties or is otherwise rendered invalid by any court of competent jurisdiction, it shall become null and void and shall not become part of the record in the ENF-89-12 proceeding nor may it be used in any fashion by any party in a legal proceeding.

10. If the Commission brings an action in United States District Court to enforce the terms of the Order, Via/Net Companies agree that they will not contest the validity of the Order, will waive their statutory right to a trial *de novo* and will consent to a judgment incorporating the terms of this Consent Decree.

For: Via/Net Companies,
American Digital Corporation,
Metropolitan Digital, Inc., and
Spectratel, Inc.

/s/ Carl B. Hilliard, Jr. August 16, 1990
Carl B. Hilliard, Jr.

/s /S. E. Hilliard August 16, 1990
Sharon E. Hilliard

For: Enforcement Division
Common Carrier Bureau
Federal Communications Commission

/s/Gregory A. Weiss August 16, 1990
Gregory A. Weiss
Chief, Formal Complaints & Investigations Branch

FOOTNOTES

[1] Letter from Richard B. Hart and Jeffrey Krauss to Gerald Brock (June 26, 1989).

[2] Letter from Gregory A. Weiss to Thomas J. Dougherty, Jr. (Nov. 7, 1989). The response date was extended to January 23, 1990 at the request of the companies cited in M/A-Com's letter. *See* letter from Thomas J. Dougherty, Jr. to Gregory A. Weiss (Nov. 20, 1989).

[3] Letter from Thomas J. Dougherty, Jr. to Gregory A. Weiss (Jan. 19. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-132

In the Matter of

Competition in the Interstate
Interexchange Marketplace

ORDER

Adopted: August 21, 1990; Released: August 22, 1990

By the Deputy Chief, Common Carrier Bureau:

1. On August 20, 1990 the United States Department of Justice (DOJ) filed a motion seeking a fourteen-day further extension of the deadline for filing reply comments in this proceeding.[1] DOJ states that it needs additional time because of the importance and complexity of the issues presented, the volume of comments that were filed, and the conflicting demands placed on DOJ's limited resources by ongoing proceedings before the United States District Court for the District of Columbia concerning removal of the information services restriction imposed on the Bell Operating Companies by the Modification of Final Judgment.[2]

2. Although it is the policy of the Commission that extensions of time shall not be routinely granted, [3] we believe, in light of the importance of the issues presented in this proceeding, that the public interest would be served by allowing DOJ the additional time it requests for filing reply comments. Therefore, we grant DOJ's motion and extend the date for filing reply comments by an additional fourteen days, until September 18, 1990.

3. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (j) and 155 (c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of DOJ for further extension of time is GRANTED. The deadline for filing reply comments is extended to September 18, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Operations
Common Carrier Bureau

FOOTNOTES

[1] This proceeding was initiated by a Notice of Proposed Rule Making, released April 13, 1990. *See* Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627 (1990). On July 13, 1990, we granted a DOJ motion seeking a thirty day extension of the deadline for reply comments. *See* Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, DA 90-956, released July 16, 1990. We had previously extended the period for filing comments from June 12, 1990 to June 27, 1990, and then from June 27 to July 3, 1990. *See* Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 3451 (1990) (extending comment deadline to June 27, 1990), and Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 3530 (1990) (extending comment deadline to July 3, 1990).

[2] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[3] *See* 47 C.F.R. §1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-523

In re Applications of

CR BROADCASTING, INC. File No. BPH-870918ME

SAGA COMMUNICATIONS OF ILLINOIS, INC. File No. BPH-870918MS

DANIEL S. STRATEMEYER File No. BPH-870918MZ

For Construction Permit for
New FM Station, Channel 271B1,
Mt. Vernon, Illinois

Appearances

James F. Freeman on behalf of CR Broadcasting, Inc.; *Allan G. Moskowitz*, and *Bruce A. Eisen*, on behalf of Saga Communications of Illinois, Inc.; *Clifford M. Harrington* and *Kathryn R. Schmeltzer* on behalf of Daniel S. Stratemeyer.

DECISION

Adopted: August 20, 1990; Released: August 28, 1990

By the Review Board: MARINO (Chairman), and ESBENSEN. Board Member BLUMENTHAL absent.

Board Chairman MARINO:

1. In his *Initial Decision*, 5 FCC Rcd 1232 (1990) (I.D.), former Acting Chief Administrative Law Judge James F. Tierney (ALJ) granted the application of Daniel S. Stratemeyer to construct and operate a new FM station at Mt. Vernon, Illinois. In reaching this result, the ALJ disqualified CR Broadcasting, Inc. (CR) for providing inadequate city grade coverage pursuant to 47 CFR §73.315(a), and found that Stratemeyer was comparatively superior to both remaining applicants, CR and Saga Communications of Illinois, Inc. (Saga) under both the diversification and integration criteria of the standard comparative issue. We have reviewed the exceptions of CR and Saga (neither of whom requested oral argument) and conclude that they do not raise any serious or substantial questions warranting extended discussion. The Board will affirm the grant of Stratemeyer's application.

STRATEMEYER

2. Stratemeyer, an individual applicant, was awarded 100% integration credit based on his intention to serve full-time as general manager of the proposed Mt. Vernon station, with overall responsibility for all aspects of its operation. I.D., paras. 16, 18, 49. Saga challenges this award on the grounds that the applicant's "educational pursuits" and potential for involvement of family members in his station operation negate the reliability of his proposed integration. Specifically, Saga contends that Stratemeyer contradicted his integration proposal by stating he would attend graduate school if this proceeding was not settled by the fall semester of 1989, and that Stratemeyer has a history of employment and/or ownership at family-owned stations in Anna and Metropolis, Illinois, which belies his claim that he would independently operate the proposed Mt. Vernon station without significant family involvement.

3. We reject Saga's exceptions. Stratemeyer, who was an undergraduate student at the time of the hearing in May 1989, expected to graduate in August 1989 and to enroll in a graduate studies program to commence the following semester. Tr. 177. He plainly testified, however, that he "will not allow [his] educational pursuits to interfere with [his] commitment to work full-time at the station." Stratemeyer, Exh. 2, p.2; I.D., para. 18. In this context, the ALJ reasonably found that although Stratemeyer intended to continue his studies if this proceeding was not quickly resolved, he would terminate those studies if he ultimately prevailed. I.D., para. 18.

4. The Commission has held that "[i]t is unrealistic . . . to expect the status of the principals of an applicant to remain static during often lengthy proceedings." *Coast TV*, 4 FCC Rcd 1786 (1989), and it appears here that Stratemeyer's planned enrollment in a graduate program, which he may terminate at will, does not undermine his commitment to the station upon final grant. Thus, this case is unlike *LeiningerGeddes Partnership*, 2 FCC Rcd 3199 (Rev. Bd. 1987), *rev. denied*, 3 FCC Rcd 1181 (1988), relied on by Saga, where integration credit was lost because principals had *continuing* obligations to other business activities which they did not eliminate or substantially diminish in order to effectuate their proposals. We also dismiss as speculative and entirely unsupported by record evidence Saga's vague allegations of impermissible family involvement in Stratemeyer's application. Stratemeyer has pledged to divest his ownership interest in the licensee of two stations previously owned by his parents in Anna, Illinois, and to give up any other employment he might hold in order to work full-time at the station. I.D., para. 18; Stratemeyer Exh. 2. There is thus no record basis upon which to infer untoward family influence. Further, Saga's surmise that a grant to Stratemeyer will have an adverse diversification impact is equally groundless in view of Stratemeyer's unambiguous divestiture pledge.

SAGA

5. Under the standard comparative issue, Saga was assessed a substantial diversification demerit primarily because it is the licensee of three broadcast stations in Illinois, each of which is within 130 miles of Mt. Vernon, and none of which it plans to divest. I.D., para. 47. Although we would reduce this demerit to moderate, *see, e.g., Ramon Rodriguez*, FCC 90-243, released July 6, 1990, Stratemeyer, having no attributable media interests, is plainly superior. Saga also was awarded no quantitative integration credit, I.D., para. 51, and does not except to this determination. Conversely, Stratemeyer, as discussed earlier, is entitled to 100% full-time integration credit.

With substantial integration and moderate diversification preferences, Stratemeyer readily prevails over Saga. Moreover, even if we agreed in whole or in part with Saga's attack on Stratemeyer's integration proposal, Saga's considerable diversification demerit would still leave it comparatively well behind Stratemeyer.

CR BROADCASTING

6. CR's application was designated on an issue to determine whether it would provide coverage of its proposed community of license (Mt. Vernon) with a city grade signal, as required by 47 CFR §73.315(a), and, if not, whether a rule waiver was justified. *See Hearing Designation Order*, 53 Fed. Reg. 48721, released November 21, 1988 (HDO). This issue was specified because CR's application proposed to place a 3.16 mV/m signal over only 22.3% of Mt. Vernon. The HDO rejected CR's waiver request, noting that all the other applicants (including Bryan Davidson, since dismissed) had managed to provide at least 80% city grade coverage. *Id.*, at para. 2. Although CR attempted to amend its application on January 3, 1989 to specify a new site (that used by Davidson), this amendment was rejected by the ALJ as untimely because 16 months had elapsed since the filing of CR's application. *See Memorandum Opinion and Order*, FCC 89M-200, released January 19, 1989. In light of CR's lack of diligence for its proposed amendment, and the magnitude of the waiver required to justify its minimal city grade coverage, the ALJ denied CR's application. In its exceptions, CR argues that its original application proposal was based on an erroneous engineering conclusion that its tower could not be located to provide a city grade signal to Mt. Vernon; that its corrective amendment should have been accepted as a matter of right pursuant to 47 CFR §73.3522(b); that even if good cause was required, it did not lack diligence because it did not know of the defect in its application until the HDO; and that acceptance of the amendment would not be disruptive to the proceeding.

7. We deny CR's exceptions. First, its reliance on 47 CFR §73.3522(b) is misplaced. That provision permits amendments relating to issues first raised in the HDO to be filed as a matter of right within 30 days of the HDO's publication in the Federal Register. Here, not only was CR's amendment submitted well beyond the 30 day deadline, but it is also extremely doubtful that this matter was first brought to CR's attention by the HDO since CR well knew that its original 22.3% coverage proposal was on its face deficient (and, indeed, it acknowledged as much by seeking a rule waiver in its application). In light of this knowledge, the ALJ properly considered CR's late-filed amendment as lacking due diligence because CR had ample opportunity to not only inspect its competitors' applications but to also perfect its own proposal – in fact, it ultimately chose the site of one of its competitors – but instead waited well over a year to take action. In view of CR's patently deficient proposal, the ALJ correctly resolved the issue against it. *See Millard Orick, Jr.*, 89 FCC 2d 571 (Rev. Bd. 1982), *rev. denied*, FCC 82-479, released November 3, 1982. But it is unnecessary to belabor CR's ultimate disqualification because even assuming, *arguendo*, that CR's amendment should have been accepted, and the city coverage issue resolved in its favor, CR's comparative posture in this case borders on the preposterous. Not only did the ALJ assess a significant diversification demerit against CR based on its ownership of numerous other broadcast stations, but he also awarded it no integration credit because it claimed none. I.D., paras. 45-46, 50. CR does not except to these conclusions and, indeed, the only comment CR addresses to its comparative deficiencies is simply that it "reserve[s] the right to object to the application of the 1965 policy statement [*Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965)] in this proceeding." Br. at 4-5. As CR recognizes, the Board cannot give credence to such a position, and CR's relief, if any, must be obtained from the Commission. *See Anchor Broadcasting Limited Partnership*, 5 FCC Rcd 2432, 2439 n. 3 (Rev. Bd. 1990). Thus, we affirm the ALJ's conclusion that Stratemeyer, the only applicant before us offering a serious comparative proposal, is entitled to the grant.

8. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend filed August 13, 1990 by Saga Communications of Illinois, Inc. IS GRANTED, and the amendment IS ACCEPTED; and,

9. IT IS FURTHER ORDERED, That the application of Daniel S. Stratemeyer (File No. BPH-870918MI) for a construction permit for a new FM broadcast station in Mt. Vernon, Illinois IS GRANTED; and the applications of CR Broadcasting, Inc. (File No. BPH-870918ME) and Saga Communications of Illinois, Inc. (File No. BPH-870918MS) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-162

In re applications of

ELIJAH BROADCASTING CORPORATION
Walkersville, Maryland — File No. BP-850411AD

RESTON COMMUNITY BROADCASTING, INC.
Reston, Virginia — File No. BP-850701AK

For construction permit for a new AM station on 700 KHz

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 1990; Released: August 29, 1990

By the Commission: Commissioner Marshall not participating.

1. Now before the Commission is an application filed by Elijah Broadcasting Corporation ("EBC") on September 28, 1988 for review of the Decision of the Review Board in this case, *Elijah Broadcasting Corporation*, 3 FCC Rcd 5148 (Rev. Bd. 1988), and an opposition to the application for review filed by Reston Community Broadcasting, Inc. ("RCBI") on October 12, 1988.[1] The Review Board held in its decision that RCBI had shown good cause for amending its application to specify a new transmitter site and that RCBI's proposal to serve Reston, Virginia is to be preferred over EBC's competing application to serve Walkersville, Maryland, because Reston has greater need for a first local broadcast service than Walkersville. The Board therefore granted a motion by RCBI for leave to amend its site specification and ordered that RCBI's application was to be granted and EBC's denied.

2. EBC contends that the Board erred in resolving the site-amendment and 47 U.S.C. § 307(b) issues in RCBI's favor and also in failing to rule on its exceptions to the holding of Administrative Law Judge Joseph Stirmer, 2 FCC Rcd 4468 (ALJ 1987), that RCBI's proposal would be preferred over EBC's under the standard comparative issue. EBC urges us to reject the site amendment and dismiss RCBI's application as materially incomplete. Alternately, EBC urges that Walkersville should be the preferred community under Section 307(b) or that EBC's application should be granted on comparative grounds.

Acceptance of RCBI's Site Amendment

3. RCBI notified the Review Board in November 1987, while this case was pending on exceptions, that it had lost its proposed transmitter site because the site owners intended to sell the property to a residential developer. EBC thereupon moved for dismissal of RCBI's application for lack of a transmitter site. After RCBI submitted a report in February 1988 concerning its efforts to secure a new site, the Board declared that, should RCBI fail to file a site amendment supported by a showing of good cause for acceptance within 60 days, i.e., by April 19th, the Board would "move forthwith" to rule on the motion to dismiss. 3 FCC Rcd 820 (Rev. Bd. 1988). RCBI accordingly filed a site amendment with a petition for leave to amend on April 19, 1988. It filed a further amendment in June 1988 to indicate that the FAA had issued a "no hazard" finding regarding the newly-proposed site.

4. In reliance upon a signed declaration by the former owners of the property where RCBI had originally proposed to place its transmitter and other statements provided by RCBI, the Board found as follows regarding justification for the amendment: that RCBI had had reasonable assurance of use of its initially specified transmitter site until October 1987; that the landowners had first informed RCBI's principal late in October 1987 that the property would no longer be available for lease as a transmitter site and RCBI had reported that change of circumstance within 30 days, in compliance with 47 C.F.R. § 1.65(a); that RCBI had exhibited diligence in securing assurance of a new site and filing a new site amendment within the time that the Board had allowed; that the amendment had been made necessary by an event that RCBI could not reasonably have foreseen; and that RCBI had satisfied the other criteria of good cause for acceptance of a post-designation engineering amendment.

5. EBC contends that the Review Board erred in finding good cause for accepting the amendment on the basis of unsworn statements of RCBI's counsel in a pleading. EBC refers to the eighth paragraph of the Board's decision, where the Board recited an allegation in the petition to amend to the effect that RCBI's principal, David Mathews, and the trustee of the property where RCBI now proposes to place its transmitter had negotiated an agreement whereby the new site was to be made available to RCBI should it prevail in this case. EBC points out that there is no statement of record by Mathews or any other principal as to the existence of such an agreement and asserts that, although it urged the Board to require RCBI to produce a copy of the agreement, the Board declined to do so.

6. We are not persuaded by this argument. The Board's Decision merely set out the statement in question as part of its summary of RCBI's contentions with respect to this matter. Thereafter, the Board found that RCBI had secured reasonable assurance of availability of the new site. 3 FCC Rcd at 5151 ¶ 15. That finding was proper. RCBI's amendment of April 19, 1988 precisely specified the location of the new site and included a statement certified by Mathews that "the applicant [has] reasonable assurance. . . that the site . . . will be available . . . for the intended purpose," that "applicant . . . has obtained such reasonable assurance by contacting the owner or person possessing control of the site," and that Robert L. Thoburn was the name of the person contacted. That certified statement sufficed to indicate that RCBI had secured the requisite assurance of the new site's availability for purposes of

making a *prima facie* showing of good cause for accepting the site amendment. EBC presented nothing to rebut that showing. The assertion of counsel to which EBC refers is thus of no moment to the resolution of this case.

7. EBC further contends, citing *Garrett, Andrews & Letizia, Inc.*, 88 FCC 2d 620 (1981), that the Review Board violated "constitutional and statutory safeguards" in considering the statement of the former owners of RCBI's originally-proposed site (Mr. and Mrs. Fallon) in connection with its ruling on the motion for leave to amend, because EBC assertedly had "no opportunity to cross-examine the witnesses or subpoena balancing affidavits." EBC alleges in this connection that the Fallons told EBC that they would give no further statements for the record except under subpoena. EBC's reliance on *Garrett* is misplaced. In that case, the Review Board had directed one party to submit further affidavits while declaring that it would accept no further presentation on point from any other party and had then proceeded to deny a motion to enlarge issues after having considered those affidavits. The Commission held that the Board had erred in considering the affidavits without having afforded adversaries a chance to rebut them. *Id.* at 624. Here, in contrast, there is no showing that the Board denied EBC an opportunity to rebut the declaration that RCBI filed with its petition for leave to amend. The Board did not proclaim in this instance that it would refuse to entertain a rebuttal showing, and it was not responsible for the Fallons' obstinacy. Thus, EBC has no ground for complaint.

8. EBC maintains that, even if it was not improper for the Board to consider the Fallons' statement, it was wrong of the Board to find from the statement that RCBI had had "reasonable assurance" of its originally-specified site until October 25, 1987, the date when Helen Fallon told Mathews that she and her husband had received an offer for the surrounding property that they were inclined to accept. In connection with this contention, EBC argues, to begin with, that if the Fallons' statement is to be considered at all the Commission ought to interpret it in the light least favorable to RCBI, in view of the fact that an RCBI principal composed the statement for the Fallons to sign. According to EBC, it can be seen from a fair reading of the declaration that, instead of giving RCBI assurance that it would be able to use their property for a transmitter site, the Fallons had merely indicated in inconclusive discussions that they might consent to such an arrangement.

9. Moreover, EBC calls attention to another declaration that the Fallons had signed in 1985 and that RCBI submitted with the petition for leave to amend:

> This statement of availability is made solely for the purpose of complying with the F.C.C. regulations pertaining to representations of site availability . . . . This exhibit is not intended to state or suggest that a purchase offer or agreement exists, or that the parties have arrived at any agreement(s) regarding the land. This exhibit is for informational purposes only, and as it may be unilaterally revoked at any time, without notice, no claim(s) of liability may be made on its account.

RCBI Petition for Leave to Amend, Ex. 1, second attachment. EBC submits that the foregoing is a clear disavowal of assurance of site availability. EBC further contends in this regard that *National Innovative Programming Network, Inc. of the East Coast*, 2 FCC Rcd 5641 (1987), which the Board cited as a controlling precedent, is inapposite because the landowner in that case did not give a statement "for informational purposes only" or expressly provide for unilateral revocation without notice. In sum, EBC asserts that RCBI fell far short of demonstrating reasonable assurance as defined by precedents establishing that a firm understanding with the site owner is required and that conducting vague discussions without negotiating a "bona fide arrangement" is not enough.

10. EBC has not persuaded us that the Review Board misinterpreted the Fallons' declaration or that its acceptance of the Fallons' statements as a sufficient showing of reasonable assurance was contrary to precedent. It bears emphasis that the Commission's reasonable assurance standard is a liberal one, reflecting an underlying policy judgment that it would not serve the public interest to add to the cost and risk that applicants incur by requiring them to secure binding commitments for the use of proposed transmitter sites. *See Alden Communications Corp.*, 3 FCC Rcd 3937, 3938 ¶ 8 (1988). All that is ordinarily necessary for reasonable assurance is some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated, and that he would give notice of any change of intention. *See, e.g., National Innovative Programming Network*, supra, 2 FCC Rcd at 5643 ¶ 11, and *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984). In other words, the applicant need only obtain assurance "sufficient . . . to justify . . . belief that the . . . site [is] suitable and available until advised otherwise." *National*, supra, 2 FCC Rcd at 5643 ¶ 11, quoting *Puopolo Communications, Inc.*, 60 RR 2d 964 (Rev. Bd. 1986).

11. We do not agree that the proviso to the Fallons' 1985 declaration amounted to a disavowal of assurance that the site in question was available. The denial therein that the Fallons had entered into any contract with RCBI is of no moment. By the same token, it is immaterial that the assurance that the Fallons gave was subject to unilateral revocation. To hold otherwise would necessarily imply, contrary to precedent, that site assurance must be legally binding to be sufficient. Nor do we see any material significance in the statement that the declaration was "for informational purposes only," which the Fallons evidently inserted to reinforce the negation of any inference that they had as yet incurred any legal obligation toward RCBI; surely they did not mean to be understood as thereby confessing that their foregoing assurances were insincere. And we do not read the proviso to mean that they contemplated revoking their tentative commitment without even notifying RCBI of their change of intention, but rather as meaning that they reserved the right to revoke without giving notice in advance. The latter interpretation is confirmed by the account that the Fallons later gave of their dealings with RCBI, which discloses that they kept it fully apprised of their intentions and that they had assured RCBI's attorney when they executed the 1985 declaration that "we had no intention of making changes which would make the land unavailable without discussing the situation with him." 3 FCC Rcd at 5149 ¶ 9.

12. As described in the later declaration that is quoted in full in the Board's Decision, the Fallons' assurances to RCBI were patently sufficient. They asserted that they had

been "willing to make [the site] available to [RCBI] given some later agreement for transfer upon mutually acceptable terms"; that they "were still favorably disposed toward making this land available" to RCBI in 1985, and that from December 6, 1983 to October 25, 1987 the site "was, in good faith, made available to [RCBI] for possible use as a transmitter site. *Id.* at 5149-50 ¶ 9. We therefore affirm the acceptance of RCBI's site amendment.

The Section 307 (b) Issue

13. EBC contended before the Review Board that RCBI is not entitled to credit for proposing to establish a first local broadcast service because the place that it specifies as its proposed community of license, Reston, is merely a part of greater metropolitan Washington, D.C. and already receives local service from stations in that vicinity. In other words, EBC sought to invoke the *Huntington* doctrine against RCBI. *See Huntington Broadcasting Co.*, 5 RR 721 (1949), rehearing denied, 6 RR 569 (1950) aff'd, 192 F.2d 33 (D.C. Cir. 1951). The Board concluded, however, that Reston is a separate community for purposes of analysis under Section 307(b).[2] EBC maintains in its application for review that the Board's resolution of the *Huntington* question in this case is at odds with our recent opinion in *Faye & Richard Tuck, Inc. KBEC*, 3 FCC Rcd 5374 (1988). If the Commission is to decide this case by the principles laid down in *Tuck*, EBC asserts, then it must withhold credit from RCBI for proposing to establish a first local broadcast outlet and consequently award a decisive 307(b) preference to EBC for proposing to give first local service to Walkersville. RCBI denies that the Board's 307(b) holding is at odds with *Tuck*.

14. The *Tuck* decision restated the principles for application of the *Huntington* doctrine, *i.e.*, for determining whether an applicant would actually provide a local broadcast outlet to its designated community of license or would instead serve a metropolitan area of which the specified community merely comprises an integral part. The Commission said there that: (1) the most important consideration in *Huntington* analysis is the degree of interdependence between the specified community and the central city of the metropolitan area in question, which is to be determined from a number of factors; [3] (2) the populations of the specified community and the central city and the distance between them are also relevant; (3) the applicant's signal population coverage will also be considered -- but only if it is proposing to operate with "maximum power"; and (4) the burden of proof for a party invoking *Huntington* will be higher when the community in question lies outside of the "urbanized area" of the central city.

15. More recently, in *RKO General, Inc. (KFRC)*, 5 FCC Rcd (1990), we held that findings as to population size, proximity, and signal population coverage "strongly favor[ed]" applying *Huntington* against applicants specifying Richmond, California as their proposed community of license. We found that Richmond was 16 miles from San Francisco, that it lay within the San Francisco-Oakland urbanized area, and that its population was one-ninth of San Francisco's. Regarding signal coverage (which we considered after noting that the Richmond applicants proposed to operate with the maximum permissible power for a station of the pertinent class), we observed that all of the competing applicants, including those specifying Richmond, proposed coverage identical to KFRC's existing coverage, which encompassed the metropolitan area and reached 7,204,793 persons. We laid particular stress on Richmond's location within the urbanized area, indicating that that circumstance alone raised an inference that it was not an independent community. And we concluded that the evidence relevant to the other indicia of interdependence was indeterminate. Hence, we denied 307(b) preferences to the Richmond applicants.

16. The situation of the Reston applicant in the instant case is like that of the Richmond applicants in *KFRC* in these respects: Reston is within the urbanized area of Washington, D.C.; the distance from Reston to Washington, 18 miles, is only slightly more than the distance from Richmond to San Francisco; the ratio of Reston's population to Washington's is even smaller than that of Richmond's to San Francisco's; and here, as in *KFRC*, the findings regarding indicia of independence are decidedly mixed.[4] But the cases are markedly dissimilar in regard to the factor of signal coverage. RCBI's primary signal, unlike KFRC's, would not blanket the metropolitan area from a point of transmission within the central city; rather, it would cover a relatively restricted area, centered on Reston and including only a small corner of Washington, D.C.

17. The first issue presented on these facts is whether the limited scope of RCBI's predicted coverage is of any relevance, in light of the holding in *Tuck* that coverage will not be considered unless the applicant is proposing to use "maximum power."[5] The power that RCBI proposes is less than the maximum permissible power for a station of the pertinent class, but that is not necessarily to say that it could also transmit with greater power. It might be precluded from doing so by interference rules or other regulations. *Tuck* does not say whether the "maximum power" requirement could be met by a showing concerning such constraints by an applicant proposing to use less than the highest permissible power for the pertinent class of station. The Commission's rationale on this point in *Tuck* suggests, however, that such constraints should be taken into account. The Commission explained in this regard that it did not want to give applicants an incentive for proposing limited coverage as a strategem to evade the *Huntington* doctrine and thereby obtain a 307(b) preference over competing applicants with the intention of upgrading the station after securing a license. 3 FCC Rcd at 5377 ¶¶ 31-32, 5378 ¶ 39. Thus, it is appropriate to recognize limited coverage as a factor weighing against applying *Huntington* in a case where our regulations would bar the applicant from significantly expanding its contours toward the central city.

18. There is some indication in the record that regulatory constraints would preclude RCBI from significantly expanding omnidirectional coverage from its specified site. We cannot tell from the information on hand, though, whether it would be feasible for it to expand coverage significantly over Washington D.C. consistently with the rules by changing to directional operation or by moving to a different transmitter site. As the parties made the record before the Commission issued its decision in *Tuck*, they had no reason to make any showing as to whether RCBI could or could not feasibly expand its coverage in the future. We cannot fairly resolve the *Huntington* issue in accordance with the public interest without giving the parties a chance to present evidence and arguments on this crucial threshold question.[6]

19. ACCORDINGLY, IT IS ORDERED, that, pursuant to 47 C.F.R. § 1.115(g), the Reply to Opposition to Application for Review filed on October 26, 1988 by Elijah Broadcasting Corporation IS DISMISSED and the Application for Review filed on September 28, 1988 by Elijah Broadcasting Corporation IS GRANTED to the extent indicated herein and IS OTHERWISE DENIED.

20. IT IS FURTHER ORDERED, that this case IS REMANDED for further hearing under the following issue:

> Whether it would be feasible for Reston Community Broadcasting, Inc. to provide significantly more coverage over Washington, D.C. than it now proposes, consistently with the Commission's rules.

RCBI shall bear the burden of proof with respect to this issue.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] EBC filed a reply to RCBI's opposition. Under 47 C.F.R. § 1.115(f), replies are to be filed only if requested by the Commission. No request has been made for the filing of a reply pleading in this case, and thus EBC's pleading will be dismissed. *Adjudicatory Re-regulation Proposals*, 58 FCC 2d 865, 875-6 ¶ 33 (1976).

[2] 47 U.S.C. § 307(b) provides that the FCC "shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same" in ruling on license applications.

[3] The Commission listed the factors that it deemed to be most relevant: (1) the extent to which community residents work in the larger metropolitan area; (2) whether the community has its own newspaper or other media; (3) whether community leaders and other residents perceive the community as separate from the metropolitan area; (4) whether the community has its own government and elected officials; (5) whether the telephone company issues a separate telephone book for that community and whether the community has its own zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) whether the community and central city belong to a common advertising market; (8) the extent to which the community provides its own municipal services, such as police, schools, and libraries.

[4] The findings here and in *KFRC* regarding the factors enumerated in note 3, above, are as follows: (1) 40% of Reston's residents work in Reston; 35% of Richmond's workforce works in Richmond; (2) Reston has two cable television franchises, two weekly newspapers, and a quarterly magazine; Richmond has a weekly shoppers' newspaper and an educational FM broadcast station; (3) it was not found whether residents of either community perceive it as independent; (4) Reston is not an incorporated political subdivision, but quasigovernmental organizations provide some municipal services to Reston exclusively; Richmond has a conventional municipal government; (5) it was not found whether there is a separate telephone book for Reston; there is no separate telephone book for Richmond; (6) there are commercial establishments and hospitals in Reston, and Reston has a transportation system of its own; Richmond has commercial establishments and public health facilities but no separate transportation system; (7) it was not found whether either community constitutes a separate advertising market; (8) Reston does not make provision for its own police or fire service, public libraries, or public schools, whereas Richmond's government provides a full complement of municipal services.

[5] We agree with EBC that the Review Board's assessment of the *Huntington* issue in this case, which it adopted prior to the release of *Tuck*, is not in accord with the Commission's opinion in *Tuck*. The Board considered it relevant that RCBI proposed to provide relatively restricted coverage without first determining whether it was proposing to operate with "maximum" power. Moreover, as the Board did not hold that Reston's location within the urbanized area of Washington, D.C. gave rise to a provisional inference that Reston is an integral part of that city's metropolitan area, its analytic approach is at odds with that of the Commission's recent opinion in *KFRC*.

[6] Consistent with our holding in *KFRC*, we do not believe that the adoption of *Tuck*, after release of the Board's Decision in this proceeding, warrants a general re-opening of the record on the *Huntington* question. Nonetheless, in light of the fact that a further evidentiary hearing is independently required, the presiding officer may accept additional, non-cumulative evidence concerning the independence or interdependence of Reston to the extent that he deems appropriate.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-387

In the Matter of

Amendment of Section 73.202(b), RM-7282
Table of Allotments,
FM Broadcast Stations.
(Rainelle, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 14, 1990; Released: August 29, 1990

By the Deputy Chief, Policy and Rules Division:

1. R-B Company, Inc. (petitioner), licensee of Station WRRL-FM, Channel 244A, Rainelle, West Virginia, has filed a petition for rule making requesting the substitution of Channel 237A for Channel 244A at Rainelle, and modification of its license to specify operation on Channel 237A. Petitioner seeks to substitute Class A channels in order to increase the maximum operating power of Station WRRL-FM to 6 kW, pursuant to the provisions of Section 73.211(b)(1) of the Commission's Rules.[1] Petitioner states that it will apply for the channel, if allotted.

2. A staff engineering analysis reveals that Channel 237A can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements at Station WRRL-FM's present transmitter site.[2]

3. We believe the public interest would be served by the proposed substitution of Channel 237A for Channel 244A at Rainelle since it could enable Station WRRL-FM to increase its operation to 6 kW and thus expand its coverage area. Therefore, we shall propose to modify the license of WRRL-FM at Rainelle, West Virginia, to specify operation on Channel 237A. [3]

4. In view of the above, we shall seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Rainelle, West Virginia	244A	237A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David M. Hunsaker, Esq.
Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] *See* MM Docket No. 88-375, 4 FCC Rcd 6375 (1989).

[2] The coordinates for Channel 237A at Rainelle, West Virginia, are 37-57-28 and 80-45-45.

[3] *See e.g., Morris and Pontiac, IL,* 5 FCC Rcd 1761 (1990); *Eldorado and Lawton, OK,* 5 FCC Rcd 618 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-388

In the Matter of

Amendment of Section 73.202(b), RM-7229
Table of Allotments,
FM Broadcast Stations.
(Crossville, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 15, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Mountaintop Broadcasters, Inc.,[1] (petitioner), permittee of Channel 273A, Crossville, Tennessee, the Commission considers herein a petition for rule making proposing the substitution of Channel 273C3 for Channel 273A at Crossville, and the modification of its construction permit accordingly, to specify operation on the higher class channel.

2. The allotment of Channel 273C3 can be made in compliance with the Commission's minimum distance separation requirements at the site specified by the petitioner, which is located 8.7 kilometers (5.4 miles) north of the city.[2]

3. As requested, we shall propose to modify the construction permit at Crossville to specify operation on Channel 273C3 in lieu of Channel 273A in accordance with Section 1.420(g) of the Commission's Rules. Therefore, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel at Crossville.

4. In view of the fact that Crossville could receive its first wide coverage area FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Crossville, Tennessee	257A, 273A	257A, 273C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William E. Zimsky, Esq.
Taylor & Zimsky
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Audio Broadcasters, Inc. ("ABI") was formerly the permittee of Station WEGE(FM). On December 4, 1989, ABI filed an application for a *pro forma* assignment of the permit to Mountaintop Broadcasters, whose ownership is identical to that of ABI. The application was granted on January 11, 1990.

[2] The coordinates for Channel 273C3 at Crossville, Tennessee, are 36-01-25 and 85-00-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-326

MM Docket No. 89-327

In the Matter of

Amendment of Section 73.202(b),	RM-5138
Table of Allotments,	RM-6315
FM Broadcast Stations.	RM-6448
(Havelock, Hertford,	RM-6765
Jacksonville, Fair Bluff,	RM-6779
Wilmington, Shallotte	RM-6782
and Longwood, North	RM-6836
Carolina, and	RM-6840
Murrells Inlet,	RM-7304
Bucksport, Darlington,	RM-7305
Loris, St. Stephen,	RM-7306
North Myrtle Beach,	RM-7307
Surfside Beach,	RM-7308
Johnsonville, Scranton,	
Kure Beach, Carolina	
Beach, Georgetown and	
Stallsville, South	
Carolina)[1]	

ORDER TO SHOW CAUSE

Adopted: August 16, 1990; Released: August 29, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it a complex daisy chain of allotment proposals and counterproposals involving twenty communities in North and South Carolina. We ordered consolidation of these proposals and counterproposals by *Memorandum Opinion and Order* (MM Docket No. 84-231) (" *Consolidation Order* "), 5 FCC Rcd 931 (1990), *appeal dismissed sub nom. Marine Broadcasting Corporation v. FCC and United States*, No. 90-1124 (D.C. Cir. June 4, 1990). On March 14, 1990, the Commission released a public notice ("Public Notice") requesting comment on the proposals and counterproposals discussed in the *Consolidation Order*.

2. Ogden Broadcasting of South Carolina, Inc. ("Ogden"), licensee of Station WNMB(FM), Channel 288A, North Myrtle Beach, South Carolina, submitted one of the proposals listed in the Public Notice. Ogden proposes to substitute Channel 290C3 for Channel 288A at North Myrtle Beach and to modify its authorization for Station WNMB(FM) to specify the higher powered channel. To accommodate the North Myrtle Beach substitution, Ogden proposes the substitutions of Channel 235A for Channel 290A at Loris, South Carolina, and Channel 291A for Channel 290A at St. Stephen, South Carolina. Ogden notes that Channel 290A at Loris is a vacant but applied for channel, and that a construction permit (BPH-870918NC) has been granted for Channel 290A at St. Stephen to George Wells ("Wells").[2] Ogden requests that the Commission issue a show cause order to Wells as to why he should not be required to modify his construction permit to specify operation on Channel 291A.

3. We believe the public interest would be served by the comparative consideration of Ogden's proposal with the other proposals presented in the Public Notice. Adoption of Ogden's proposal could provide a wide area FM service to North Myrtle Beach, South Carolina. In order to proceed with an analysis of the proposals in this proceeding, it is necessary to issue an Order to Show Cause to George Wells, permittee of Station WTUA-FM, Channel 290A, St. Stephen, South Carolina, why his permit should not be modified to specify operation on a different Class A channel as follows:

	Channel No.	
City	Present	Proposed
St. Stephen, South Carolina	290A	291A

Ogden has acknowledged a responsibility to reimburse Wells for the reasonable and prudent expenses incurred in changing Station WTUA-FM to another Class A channel. [3]

4. A final determination regarding the conflicting proposals presented in the Public Notice must await the outcome of this show cause order concerning the modification of the permit for Station WTUA-FM. Although Wells is provided an opportunity to object to the ordered channel change, this Order does not provide additional opportunity either to comment on the merits of the proposals or for the acceptance of counterproposals.

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, George Wells, permittee of Station WTUA-FM, St. Stephen, South Carolina, SHALL SHOW CAUSE why his permit should not be modified to specify operation on Channel 291A instead of Channel 290A.

6. Pursuant to Section 1.87 of the Commission's Rules, George Wells may not later than **October 22, 1990** file a written statement showing with particularity why his permit should not be modified as proposed in the Order to Show Cause. The Commission may call on George Wells to furnish additional information. If George Wells raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, George Wells will be deemed to have consented to the modification as proposed in the the Order to Show Cause, and a final order will be issued by the Commission if the above-mentioned channel modifications ultimately are found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this Order to Show Cause BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Mr. George Wells, P.O. Box 1103, St. Stephen, South Carolina, 29479.

8. A copy of any comments by George Wells in this proceeding should be served on the following:

Robert W. Healy
Troy F. Tanner
Reddy, Begley and Martin
Suite 500
2033 M Street, N.W.
Washington, D.C. 20036
(Counsel to Marine Broadcasting Co.)

James A. Koerner
Baraff, Koerner, Olender and Hochberg, P.C.
2033 M Street, N.W.
Suite 203
Washington, D.C. 20036
(Counsel to Musicradio of North Carolina, Inc.)

J. Geoffrey Bentley
Geraldine M. Carr
Birch, Horton, Bittner, Pestinger and Anderson
1155 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036
(Counsel to Maranatha Broadcasting Co.)

Martin R. Leader
John K. Hane
Fisher, Wayland, Cooper and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel to Jones, Eastern of the Grand Strand, Inc.)

Michael K. Garner
RJM Broadcasting
171 Church Street
Suite 210
Charleston, S.C. 29401

Ron McKay
RJM Broadcasting
171 Church Street
Suite 210
Charleston, S.C. 29401

Philip L. Malet
Steptoe and Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Counsel for Ogden Broadcasting of South Carolina, Inc.)

Erwin G. Krasnow
William E. Kennard
Verner, Liipfert, Bernhard, McPherson and Hand
901 15th Street, N.W.
Washington, D.C. 20005-2301
(Counsel to Radio Carolina Limited Partnership)

Earl R. Stanley
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
(Counsel to G&M Communications)

Diane L. Mooney
Rosenman & Colin
1300 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(Counsel to Jennings Communications Corp.)

William J. Pennington, III
Great Southern Media
5519 Rockingham Road-East
Greensboro, NC 27407

Mark J. Palchick
Bishop, Cook, Purcell and Reynolds
1400 L Street, N.W.
Washington, D.C. 20005
(Counsel to Todd Spoeri)

Mark Fields
Miller and Fields, P.C.
1990 M Street, N.W.
Suite 760
Washington, D.C. 20036
(Counsel to Beach Broadcasting of North Carolina, Inc.)

Dale Hendrix
Hendrix Broadcasting
126 South Jefferson
Aurora, MO 65605

Howard M. Weiss
Mark N. Lipp
Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036
(Counsel to Longwood

Gary S. Smithwick
Smithwick and Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, D.C. 20036
(Counsel to Pro Media, Inc.)

Mark J. Prak
Tharrington, Smith and Hargrove
209 Fayetteville Street Mall
P.O. Box 1151
Raleigh, NC 27602
(Counsel for Muirfield Broadcasting, Inc.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 8, 1981.

10. For further information concerning this proceeding, contact Michael Ruger, Mass Media Bureau, (202) 632-7792. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commissions specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Havelock, Hertford, Jacksonville, Fair Bluff, Wilmington, Murrells Inlet, Bucksport, Darlington, Loris, St. Stephen, North Myrtle Beach, Surfside Beach, Johnsonville, Scranton, Georgetown and Stallsville have been added to the caption of this proceeding.

[2] Proposed coordinates for Station 291A at St. Stephen are 33-29-36 and 79-53-21, the same coordinates specified in Wells' construction permit.

[3] After Ogden submitted its petition, the Commission granted a construction permit to Robert L. Rabon (BPH-870918MA) for Channel 290A at Loris contingent on the outcome of this proceeding. Because the construction permit had not been granted when Ogden submitted its proposal, and because the permit is contingent on the outcome of this proceeding, Ogden is not required to reimburse Rabon for the reasonable and prudent expenses incurred in substituting Channel 235A for Channel 290A. *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-582

In the Matter of

Amendment of Section 73.202(b),	RM-6443
Table of Allotments,	RM-6686
FM Broadcast Stations.	RM-6687
(Morehead, Russell and	RM-6688
Westwood, Kentucky)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 15, 1990; Released: August 29, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Brad Lee Todd Corporation ("BLT"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 305 (1989), proposing the allotment of Channel 242A to Morehead, Kentucky, as that community's second local FM service. In response to the *Notice*, BLT filed comments restating its interest in Channel 242A at Morehead. Cromwell Group, Inc. ("Cromwell"), an applicant for Channel 242A at Wilmore, Kentucky, filed a counterproposal supporting a second local service to Morehead, but suggesting Channel 259A rather than 242A. Hays McMakin ("McMakin"), filed a counterproposal requesting the allotment of Channel 242A to Russell, Kentucky, as a first local service.[1] James C. Sliger ("Sliger"), filed a petition seeking the allotment of Channel 259A to Westwood, Kentucky, as a first local FM service. We have treated that request as a counterproposal in this proceeding.[2] Sliger filed reply comments. BLT and Sliger filed comments in response to the counterproposals.

2. Cromwell filed comments and a counterproposal supporting a second FM service to Morehead. Cromwell contends that the allotment of Channel 259A to Morehead is to be preferred since a lesser or no site restriction will be required for the allotment of Channel 259A. Cromwell states that the advantages of allotting Channel 259A to Morehead, Kentucky, should be compared with the short-spacing and consequential site restriction necessary for the allotment of Channel 242A to Morehead, Kentucky.

3. Sliger's petition for rule making seeks allotment of Channel 259A to Westwood, Kentucky, as a first local FM service. Sliger filed reply comments opposing Cromwell's proposal to allot Channel 259A to Morehead, because the proposal to allot Channel 259A to Westwood conflicts with Cromwell's counterproposal to allot Channel 259A at Morehead. Sliger states that Cromwell has not expressed any interest in applying for or constructing a new station on Channel 259A at Morehead. Sliger states that Cromwell's only interest in this proposal is to protect a transmitter site for which it has applied at Wilmore, Kentucky.[3] Sliger states that Cromwell would seek to deny Westwood its first local service in order to protect its preferred site location. Sliger contends that an applicant's preferred transmitter site does not take precedence over a new service, particularly a first local service.

4. In reply comments, BLT states that Sliger's proposal to allot Channel 259A to Westwood had nothing to do with the Morehead proposal until Cromwell came into the proceeding.

5. We find that Cromwell's concerns regarding the conflicts between Channel 242A at Wilmore, Kentucky, and the allotment of Channel 242A to Morehead, Kentucky, has been eliminated, because the applicants for Channel 242A at Wilmore, Kentucky, have been ordered to amend their applications to specify Channel 290A at Wilmore, Kentucky. *See, Memorandum Opinion and Order* in MM Docket No. 88-31, 5 FCC Rcd 927 (1990).

6. After consideration of the information filed in this proceeding, we believe the public interest would be served by allotting Channel 242A to Morehead, Kentucky, as a second local service and allot Channel 259A to Westwood, Kentucky, as a first local service.

7. As stated in the *Notice*, Channel 242A can be allotted to Morehead, Kentucky, in compliance with the Commission's minimum distance separation requirements.[4] Channel 259A can be allotted to Westwood, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction 12.2 kilometers (7.6 miles) southwest.[5] Since each of the petitions resulting in these allotments was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 15, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Morehead, Kentucky	221A, 242A
Westwood, Kentucky	259A

9. The window period for filing applications will open on **October 16, 1990,** and close on **November 15, 1990.**

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] McMakin, subsequently withdrew his counterproposal. Based on the withdrawal of McMakin's proposal it will be dismissed, and all comments relating to the proposal will not be considered herein.

[2] Public Notice of the counterproposals was given on March 17, 1989, Report No. 1771.

[3] The applicants for Channel 242A at Wilmore have since been ordered to amend to Channel 290A. *See* 5 FCC Rcd 927 (1990).

[4] The coordinates for Channel 242A at Morehead are North Latitude 38-11-37 and West Longitude 83-24-16.

[5] The coordinates for Channel 259A at Westwood are North Latitude 38-26-20 and West Longitude 82-47-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-393

In the Matter of

Amendment of Section 73.202(b), RM-7213
Table of Allotments,
FM Broadcast Stations.
(Tomahawk, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 17, 1990; Released: August 29, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Gregory A. Albert and Margaruite S. Albert, d/b/a Albert Broadcasting (petitioner), requesting the substitution of FM Channel 223C3 for Channel 224A at Tomahawk, Wisconsin. Petitioner also requests modification of the license for Station WJJQ-FM, Channel 224A, to specify operation on Channel 223C3.

2. We believe petitioner's proposal warrants consideration. Channel 223C3 can be allotted to Tomahawk, Wisconsin, in compliance with the Commission's Rules at petitioner's specified site.[1] Since Tomahawk is located within 320 kilometers (200 miles) of the U.S. - Canadian border, we shall request concurrence of the Canadian government for this allotment. As requested, we shall also propose to modify the license for Station WJJQ-FM to specify operation on Channel 223C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for Tomahawk, Wisconsin, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Tomahawk, Wisconsin	224A	223C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard R. Zaragoza
John J. McVeigh
Fisher, Wayland, Cooper & Leader
1255 Twenty-third Street Northwest
Suite 800
Washington, D.C. 20037-1125
(Counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in

initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 223C3 are 45-29-27 and 89-43-33.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-400

In the Matter of

Amendment of Section 73.202(b), RM-6808
Table of Allotments,
FM Broadcast Stations.
(Georgetown, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 17, 1990; Released: August 29, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Williamson County Communications, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 6892 (1989), proposing the substitution of Channel 299C3 for Channel 299A at Georgetown, Texas, and the modification of its construction permit for Station KJWL to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 299C3, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 299C3 for Channel 299A at Georgetown, since it could enable Station KJWL to expand its coverage area. As proposed, we will also modify petitioner's construction permit for Station KJWL to specify operation on the higher class channel. Channel 299C3 can be allotted to Georgetown in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.9 kilometers (11.7 miles) northeast to accommodate petitioner's desired transmitter site.[1]

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 15, 1990**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Georgetown, Texas	244C1, 299C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station KJWL, IS MODIFIED, to specify operation on Channel 299C3 in lieu of Channel 299A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 299C3 at Georgetown, Texas, are 30-43-08 and 97-30-24.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Sections 1.115, 1.245 and 1.301 of the Commission's Rules and Regulations Regarding Review of Motions to Disqualify Presiding Officer

ORDER

Adopted: August 20, 1990; Released: August 30, 1990

By the Commission:

1. By this Order, the Commission amends its procedures regarding review of decisions by presiding officers denying motions to disqualify themselves from adjudicatory proceedings. Under existing Commission rules, review of such decisions must be sought immediately through the filing of an exception with the Commission, and the hearing is suspended pending a ruling by the Commission.[1] Under the rule amendments adopted here, review of such decisions must be sought through the filing of an interlocutory appeal as a matter of right.[2] To minimize delay in the conduct of adjudication proceedings, such appeals will be heard by the Review Board, and the hearing will be suspended only until the Review Board issues its decision. Immediate Commission review of a denial of the appeal may be sought through the filing of an application for review of the Review Board's decision, but the hearing will not be automatically suspended pending Commission review. [3]

2. Authority for this amendment is contained in sections 4(i), 4(j), 5(c) and 303(r) of the Communications Act of 1934, as amended.[4] Because the amendment relates to matters of agency organization, procedure and practice, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.[5]

3. ACCORDINGLY, IT IS ORDERED, That sections 1.115, 1.245 and 1.301 of the Commission's Rules and Regulations ARE AMENDED as set forth below, EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Title 47 of the Code of Federal Regulations, Part 1, is amended to read as follows:

I. Part 1 - Practice and Procedure.

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 1.115(e)(1) is amended by removing the last sentence thereto and replacing it to read as follows: "Applications for review of interlocutory rulings made by the Review Board (*see* §§ 0.365(b), 1.301) shall be filed only as part of the application for review of the Board's final decision, except that applications for review of rulings by the Board pursuant to § 1.301(a) may be filed separately after such ruling by the Board."

3. Section 1.245 is amended by revising paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) to read as follows:

§ 1.245 Disqualification of presiding officer.

* * * * *

(b) * * *

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Review Board. The hearing shall be suspended pending a ruling on the question by the Board.

(5) The Board may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Board's decision shall be part of the record in the case.

* * * * *

4. Section 1.301 is amended by adding paragraph (a)(3) to read as follows:

§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.

(a) * * *

(3) If the presiding officer's ruling denies a motion to disqualify the presiding judge, the ruling is appealable as a matter of right.

* * * * *

FOOTNOTES

[1] 47 C.F.R. §§ 1.245(b)(3), (4).

[2] 47 C.F.R. § 1.301(a).

[3] To be consistent with existing Commission practice, *see WWOR-TV, Inc.*, FCC 90-222 (adopted June 13, 1990), we are amending section 1.115(e) of the Rules, 47 C.F.R. § 1.115(e), to make clear that applications for review of Review Board decisions denying interlocutory appeals filed as a matter of right (which will now include appeals of disqualification denials) may be filed upon the Review Board's denial of the interlocutory appeal, and need not await the Board's decision on review of an Initial Decision. We are also correcting a reference in section 1.115(e) to the Review Board's delegated authority.

[4] 47 U.S.C. §§ 154(i), 154(j), 155(c), and 303(r).

[5] 5 U.S.C. §§ 553(b)(A), 553(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE CO., INC. — File No. I-T-C-90-105

Application for authority to acquire and operate facilities for the provision of packet switching service between Hawaii and various overseas points.

MICRONESIAN TELECOMMUNICATIONS CORP. — File No. I-T-C-90-103

Applications for authority to acquire and operate facilities for the provision of packet switching service between the Northern Mariana Islands and Hawaii

ORDER AND AUTHORIZATION

Adopted: August 21, 1990; Released: August 30, 1990

By the Chief, International Facilities Division:

1. The above-captioned applications filed on April 16, 1990 by GTE Hawaiian Telephone Company, Inc. (HTC) and Micronesian Telecommunications Corp. (MTC), request authority pursuant to Section 214 of the Communications Act of 1934, as amended, for HTC and MTC, respectively, to provide international packet switching service between Hawaii and various overseas points and between the Northern Mariana Islands and Hawaii. The applications were placed on public notice on May 16, 1990. No comments were received. Upon consideration of the applications, we find that authorization of the requested facilities and services is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-90-105 and I-T-C-90-103 ARE GRANTED, and:

a. MTC is authorized to lease from Comsat and operate one voice-grade satellite half-circuit between the Saipan earth station and an appropriate satellite over the Pacific Ocean and use this half-circuit to provide international packet switching service between the Northern Mariana Islands and Hawaii; and

b. HTC is authorized to use previously authorized facilities to provide international packet switching service between Hawaii, on the one hand, and Italy, the Netherlands, Hong Kong, the Republic of Korea, Australia, Thailand, Guam, the Federal Republic of Germany, Canada, France, Finland, Spain, Switzerland, Singapore, the Philippines, Taiwan, New Zealand, Japan, American Samoa, Northern Mariana Islands, the Marshall Islands and Palau, on the other hand.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between HTC and its correspondents, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-90-117

Application for authority to acquire and operate facilities for direct service between the U.S. and Yemen

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: August 22, 1990; Released: August 30, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on May 29, 1990 by MCI Telecommunications Corp. (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for the provision of direct service between the U.S. and Yemen. The application was placed on public notice on June 6, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Yemen by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-117 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 12 voice-grade satellite half-circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Yemen, furnished by MCI's correspondent in Yemen;

b. lease from AT&T and operate 12 voice-grade circuits in the Etam, West Virginia earth station;

c. lease and operate 12 voice-grade circuits between the Etam, West Virginia earth station and MCI's West Orange, New Jersey operating center; and

d. use said facilities to provide MCI's regularly authorized services including switched voice service, between the U.S. and Yemen and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Yemen, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-433

In re Applications of

ATLANTIC CITY COMMUNITY BROADCASTING, INC.	File No. BPH-870826ME
RADIO-VISION COMMUNICATIONS, LIMITED PARTNERSHIP II	File No. BPH-870826MF
KNIGHT RADIO, INC.	File No. BPH-870826MH
HILLSIDE BROADCASTING LIMITED PARTNERSHIP	File No. BPH-870827MK
ATLANTIC WIRELESS BROADCASTING LIMITED PARTNERSHIP	File No. BPH-870827MO
Reginald W. Lavong and Sandra M. Delgiorno d/b/a D & L BROADCASTING	File No. BPH-870827NC

For Construction Permit for
New FM Station, Channel 297B1,
Atlantic City, New Jersey

ORDER

Adopted: August 20, 1990; Released: August 31, 1990

By the Review Board: MARINO (Chairman), and ESBENSEN, Board Member BLUMENTHAL absent.

1. Knight Radio, Inc., (Knight) has filed with the Review Board a "Motion to Dismiss Application" (dated July 6, 1990). That applicant declares that "it has no further interest in prosecuting its application" in the captioned proceeding, and indicated it would file an appropriate "declaration," pursuant to 47 CFR §73.3525, "within the next several days." However, no such subsequent document has been filed with the Board to date. All other remaining applicants, save Radio-Vision Communications, have filed "declarations of no consideration."

2. In light of the absence of "declarations" from Knight and Radio-Vision, Knight's application will be dismissed for failure to prosecute because Knight has not filed exceptions in this proceeding. 47 CFR §1.276(f) provides that: "When any party fails to file exceptions within the specified time to an Initial Decision which proposes to deny its application, such party shall be deemed to have no interest in further prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute." Nevertheless, since Knight has made the specific representation that it would file a "declaration of no consideration," and, pursuant to the requirements of 47 CFR §§73.3568(b) and 73.3525(d)(e), and (f), we expect Knight and Radio-Vision to file appropriate "declarations" or affidavits.

3. ACCORDINGLY, IT IS ORDERED, That the application of Knight Radio, Inc., IS DISMISSED, with prejudice, for failure to prosecute its application, pursuant to 47 CFR §1.276(f); and,

4. IT IS FURTHER ORDERED, That Knight Radio, Inc., and Radio-Vision Communications, Limited Partnership II, pursuant to 47 CFR §§73.3525(d) and 73.3568(b) SHALL FILE, within ten (10) days of the release date of this *Order*, the appropriate affidavits/declarations contemplated by 47 CFR §§73.3525(d), (e), and (f).

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-387

In re Applications of	
ROXANNE GIVENS	File No. BPH-871202MC
MINNESOTA PUBLIC RADIO	File No. BPED-871203MC
NANCY JEAN PETERSON	File No. BPH-871203MF
SOUTHWEST SUBURBAN BROADCASTING, INC.	File No. BPH-871203MH
CRIMIEL COMMUNICATIONS ASSOCIATES LIMITED PARTNERSHIP	File No. BPH-871203MN
N. WALTER GOINS	File No. BPH-871203NE
JH BROADCAST LIMITED PARTNERSHIP	File No. BPH-871203NF
ANNE M. COUNIHAN	File No. BPH-871203NQ
COVE COMMUNICATIONS, INC.	File No. BPH-871203NT

For Construction Permit for New
FM Station, Channel 289A,
Eden Prairie, Minnesota

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 1990; Released: August 31, 1990

By the Review Board: MARINO (Chairman), and ESBENSEN. Board Member BLUMENTHAL absent.

1. The Review Board has before it a plethora of interlocutory pleadings (a total of twenty-one as of the adoption date of this document) filed by N. Walter Goins, *pro se*, and the other applicants. [1] However, the decisionally significant documents are the Appeals filed by Goins from the rulings of Administrative Law Judge Richard L. Sippel (ALJ) granting a motion for summary decision adverse to Goins on a previously-added financial issue, and the subsequent dismissal of Goins' application from this proceeding (*see* Appeals filed June 11, 1990, and July 10, 1990, respectively).

2. The ALJ first made a bench ruling on June 7, 1990 (*see* para. 7, *infra)* on a pending motion for summary decision disqualifying Goins on the financial issue (Tr. 161), [2] and subsequently memorialized his ruling by *Memorandum Opinion and Order*, FCC 90M-1606, released June 12, 1990. Thereafter, the ALJ dismissed Goins' application from this proceeding after the remaining eight parties moved for Goins' dismissal. [3] *Memorandum Opinion and Order*, 90M-1921, released July 3, 1990. Thus, the only decisional issues raised by Goins' Appeals before the Board are whether, pursuant to 47 CFR § 1.251(d), the ALJ's grant of summary decision, and his subsequent dismissal of Goins' application, were appropriate.

BACKGROUND

3. By *Memorandum Opinion and Order*, FCC 90M-70, released January 11, 1990, a financial issue was specified against Goins to determine whether he had sufficient funds available to construct and operate his proposed facility. The issue was added based upon representations made by Cove Communications, Inc., in a motion to enlarge issues. In electing to add the requested issue, the ALJ, *inter alia*, reviewed two letters written to Goins by Syncom Capital Corporation (Syncom) dated December 1, 1987 and November 8, 1989, respectively. The first letter, relied upon by Goins as the *sole* basis for the affirmative certification in his application that he was financially qualified, stated:

> Dear Walter:
>
> Please consider this letter an indication of our interest in providing construction and working capital financing should a corporation controlled by yourself be awarded the Class A FM radio license (channel 289A), serving Eden Prairie, Minnesota.
>
> Upon award of a construction permit, Syncom Capital Corporation is prepared to provide up to a [redacted] investment, subject to the usual and customary due diligence; investment analysis, which results shall be satisfactory to Syncom prior to investment approval; and approval by Syncom's Board of Directors.
>
> In the meantime, if we can be of further assistance to you, please feel free to call.
>
> Very truly yours,
> /s/ Herbert P. Wilkins
> President

It should be noted that the "redacted" amount in this letter was later claimed by Goins to be $250,000. *See* Appeal, filed June 11, 1990, p. 3. However, by letter dated November 8, 1989, Syncom withdrew its expression of "interest" in financing Goins' proposed facility:

> Dear Walter:
>
> After careful review of our files on Leo/Halcom [sic] and your recent proposal for start-up financing for a new FM station assigned to Eden Prairie, Minnesota, Syncom regretfully must decline your offer to participate in this start-up project. At the present time, Syncom holds non-interest bearing notes of Halcom [sic], a company in which you had a sizeable equity position. The SBA's regulations limit the amount of money we can have outstanding in loans and investments to any one investor at the same time (overline investment limit).
>
> Upon recovery of our investment in Halcom [sic], if your venture still needs capital, we will be more than happy to consider an investment at that time.
>
> In the meantime, I would like to express my thanks to you for giving Syncom the opportunity to consider your project.
>
> Very truly yours,
> /s/ Herbert P. Wilkins
> President

Shortly thereafter (in his Opposition filed December 11, 1989, at 12, to the financial enlargement motion), Goins represented that he was "currently taking all reasonable and diligent steps to secure substitute financing.

4. By *Order*, FCC 89M-2696, released November 24, 1989, the ALJ declared that each applicant would be required to submit its direct written case by May 21, 1990. On that date, Goins submitted his sworn written testimony, which included the following pertinent information:

> I made application for my proposed station relying on a financing commitment letter from Syncom Capital Corporation of Washington, D.C. I have conducted business with Syncom since 1980. In 1982, Syncom provided a subordinated debt facility with warrants to my 100% owned television broadcasting company, L.E.O. Broadcasting, Inc. Shortly after the first Television station went on the air, the business encountered extreme financial hardship. I caused a restructuring of the business which kept Syncom from loosing [sic] its money. Today, Syncom remains as part of the restructured television business known as Halcomm, Inc. In 1987, I asked Syncom to provide a financing letter for my Eden Prairie proposal. In 1988, I became a dissenting shareholder in the restructured television stations in which Syncom had a continuing interest. I made a demand for payment of my tendered shares under Minnesota law.
>
> I have not been paid for my tendered shares in the restructured television stations. Syncom owes me money for my tendered broadcast shares. During October of 1989, I again contacted Syncom regarding global settlement in the Eden Prairie hearing. When it became clear that Halcomm, of which Syncom is a participant, owed me for my tendered shares, Syncom abandoned its commitment to me in the Eden Prairie proposal entirely based on its ongoing relationship in the restructured television stations for what Syncom cited as an "overline" condition with respect to the rules of the Small Business Administration.
>
> * * *
>
> I have retained counsel to value my Halcomm shares. On information and belief, my shares have a fair market value in excess of two million dollars, excluding accrued interest on my claim, based upon appraisals reflected in documents produced under the order of the Presiding Judge.

Also appended to Goins' written testimony was a letter dated October 26, 1989 from Goins to Syncom, exploring the possibility of Goins securing additional funds from Syncom for buying out the other Eden Prairie applicants pursuant to a settlement agreement. While certain sums were redacted, the letter included a series of cost estimates aggregating $1.275 million dollars.

5. Based upon Goins' direct written testimony and letter attachment (which Goins' opponents intepreted to reveal that Goins' cost requirements were $1.275 million, and that he was relying exclusively on his purported shares of Halcomm stock to meet those costs), the eight competing applicants filed (on May 22, 1990) a motion for summary decision and dismissal of Goins' application. Essentially, they argued that no hearing was necessary since it was facially clear the Halcomm shares were non-liquid assets on which Goins could not rely to demonstrate he was financially qualified. Additionally, the motion included an agreement demonstrating that the Halcomm assets already had been sold at public sale and purchased by a Halcomm creditor. [4]

6. Goins then subsequently represented in a petition for leave to amend filed May 30, 1990, that he was now relying *solely* upon his personal net worth to establish his financial qualifications. Attached to Goins submission was a personal financial statement (apparently prepared by Goins), dated May 25, 1990, which revealed the following information. Goins listed his assets as "Cash $2,100"; "Cash held in trust, $10,000"[5] "Securities, $111,260" [6]; "Accrued Interest, $186,336" [7]; "IRA, $4,200"; "Real Estate, $75,000"; "Autos and Aircraft, $26,000"; and, "Personal Property $25,000." Goins also disclosed that his liabilities exceeded $160,000.

7. One week later, at a prehearing conference held on June 7, 1990, the ALJ questioned Goins as to how he planned to finance the construction and operation of the proposed station. Goins responded that he was now relying solely on his own personal assets, and more specifically was relying on his "ownership interest" in Halcomm (Tr. 145). The following colloquy ensued (Tr. 156-161; emphases added):

> [ALJ]: How did you say were going to rely on this HALCOMM stock to produce what in terms of revenue for you?
>
> [Goins]: I beg your pardon, Your Honor.

[ALJ]: You are talking about use of HALCOMM stock. You are going to sell the stock?

[Goins]: Well, Your Honor, yes.

[ALJ]: Is it listed stock?

[Goins]: No, it is not, Your Honor.

[ALJ]: Is it restricted?

[Goins]: Not that I know of, Your Honor.

[ALJ]: Have you seen the certificates?

[Goins]: *I don' t have them any more, Your Honor.*

[ALJ]: Where are they?

[Goins]: They are tendered with the corporate secretary in the State of Minnesota.

[ALJ]: Which corporate secretary?

[Goins]: The HALCOMM corporate secretary of the corporation.

[ALJ]: Who controls HALCOMM?

[Goins]: *I don't know exactly right now*, Your Honor. I am a dissenting shareholder of HALCOMM. I tendered my shares in December of 1988 under a proposed merger of HALCOMM with some other entity. The merger gave rise to certain rights that I have under Minnesota law, and my shares are now what I think the legal term is, a chose in action as opposed to a chose possession. *I do not have my shares. All I have is this intangible asset called a chose.* They have my shares. They have my property. I am owed money on it. *I do not even have a receipt for my shares, Your Honor.*

[ALJ]: *Do you think that there is a ready market for that kind of asset* ?

[Goins]: *There is absolutely not a ready market for it*, Your Honor. The Minnesota law anticipates this. The Minnesota law understands that in closely held corporations there is no ready market, and as such Minnesota law provides certain remedies to me. I believe that I have a valid claim that has an appraisal value worth several times what I would require to build and operate this proposed FM radio station for three months.

[ALJ]: But the FCC requires liquidity in that certification, and liquidity is necessary.

[Goins]: Yes, sir.

[ALJ]: There is no liquidity to what you are telling me.

[Goins]: I think that there is with respect to settlement value because appraisal value is significantly many times more than what I would require in order to build.

[ALJ]: I don't think you understand. *Do you understand what the concept of liquidity is* ?

[Goins]: Yes, Your Honor.

[ALJ: What is it in your interpretation?

[Goins]: *It means cash, liquid money today, spendable.*

[ALJ]: You are stating for the record here that you have chose in action.

[Goins]: Yes.

[ALJ]: You don't even have the legal title to the stock. They are not in your possession. How can you argue that you have a liquid asset, and one that is readily convertible to case?

[Goins]: I rely on the Minnesota statute, sir.

[ALJ]: I am sorry, that is not good enough. You have to demonstrate that as a matter of practical business sense, you have the wherewithal to turn that asset over into liquid cash immediately.

[Goins]: Yes, Your Honor.

[ALJ]: Not going through God knows that kind of legal proceedings that would be required to get those stocks in a position for you to sell. It doesn't even meet the question of whether or not there is a market for the stock even after you have gotten them under your control.

[Goins]: Your Honor, *I don't wish to have the shares under my control, nor do I intend to sell them.* There is an obligation due to me from the corporation. I have complied with the Minnesota law. The chose has value. I have supplied, under supplemental amendments in this proceedings, good appraisals as to the value of those shares. The value of those shares is significantly more than I require to build and construct for three months, and on that basis, as a non-liquid asset, I feel that the Commission's precedent is plain about non- liquid assets, and that I am financially qualified in that regard.

[ALJ]: I disagree with you. I think that the state of the law is eminently clear in that respect, with what a liquid asset is, and even just by the factual matters that you have conceded here this morning, I can

> find as a matter of law that you don't have liquid assets in these HALCOMM securities with which to meet a financial obligation of any significant amount. In terms of your trying to now restructure your financial proposal to rely upon personal assets, it is just too late. It is too close to the trial date to do that. I am going to grant this motion.
>
> The motion for the summary decision on the financial issue is granted.

The ALJ subsequently rejected Goins' financial amendment by *Memorandum Opinion and Order*, FCC 90M-1920, released July 3, 1990.

DISCUSSION

8. Pursuant to 47 U.S.C. § 308(b), the Commission requires that an applicant for broadcast facilities must be found to be financially qualified before its application may be granted; that is, the applicant must have "reasonable assurance" of sufficient net liquid assets on hand, or sufficient funds available from committed sources, to construct and operate the proposed facilities for three months without revenue. *See JAM Communications, Inc.*, 4 FCC Rcd 3754, 3757 (Rev. Bd. 1989); *Scioto Broadcasters*, FCC 90R-58, released August 14, 1990. [8] Here, Goins' estimated costs of constructing the proposed facility and operating it for three months are conceded by Goins to be, at a minimum, $250,000. To meet these costs, Goins, at the time he affirmatively certified his financial qualifications, relied solely on a letter from Syncom Capital Corporation. That letter (*see* para. 3, *supra*) is patently deficient on its face and does not meet even the most rudimentary requirements of "reasonable assurance." Specifically, the Syncom letter does not, *inter alia*, specify an interest rate, terms of repayment, or even specific collateral. Indeed, the letter states that a corporation to be owned by Goins (not Goins personally) would be the borrower. *See Scioto Broadcasters*, *supra*, at para. 13. In any event, Syncom's subsequent unequivocal withdrawal of that letter on November 8, 1989, puts to rest any question of Goins' reliance on Syncom as a source of funds. Further, despite Goins' representations on December 11, 1989 that he was taking "reasonable and diligent steps to secure substitute financing," Goins revealed nothing to the Commission concerning his financial qualifications for over five full months. Then, and only then, did Goins claim that he would rely on his own personal assets to construct and operate as proposed.

9. While the ALJ rejected Goins' substituted financial amendment proposing to rely on his personal assets, even if it is assumed, *arguendo*, that good cause was established for acceptance of his May 30, 1990 financial showing, Goins' financial statement reflected net liquid assets of, at best, only $16,300 ("cash", "cash held in trust", and "IRA"), and total liabilities in excess of $160,000, an amount facially insufficient to meet Goins' own acknowledged costs. Removing the obviously non-liquid assets from any calculus ("Real Estate," "Autos and Aircraft," and "Personal Property"), Goins remaining assets are merely the alleged assets he may have in Halcomm ("securities" and "accrued interest") of approximately $300,000. With respect to this putative financial interest in Halcomm, Goins' concedes that he has no legal title to Halcomm stock or that he could sell such stock even if he had such title. Goins may, in the future, have a legal remedy for his claimed share of Halcomm assets, but potential funds obtained under legal process are far less than what Commission precedent contemplates in presuming the kind of ready liquidity necessary to establish financial qualifications. As the Board has previously observed (in another context), "[t]he first principle . . . is that those filing an application for a broadcast construction permit be *ready*, *willing* and *able* " to construct and operate as proposed. *Dutchess Communications Corp.*, 101 FCC 2d 243, 254 (Rev. Bd. 1985). It is difficult to conceive of an applicant less ready to construct and operate a station than one dependent on the vicissitudes of legal process for securing requisite funds. Under the circumstances here, we are persuaded that there is no genuine issue as to any material fact relating to Goins' financial qualifications, and that summary decision was appropriate. *See Tri - State Communications*, 4 FCC Rcd 8258 (Rev. Bd. 1989), *recon. denied*, 5 FCC Rcd 534 (1990).

10. With no decisional error having been made with respect to the grant of summary decision (which resulted in the determination that Goins was not basically qualified to be a Commission licensee), the subsequent dismissal of Goins' application was correct. [9] Thus, Goins' other motions relating to issue enlargement against the other applicants will be dismissed as legally deficient. *See Shoblom Broadcasting, Inc.*, FCC 83R-89, released November 7, 1983 (Rev. Bd.).

11. ACCORDINGLY, IT IS ORDERED, That the Appeal From Presiding Officer's Interlocutory Ruling and the Appeal Of Dismissal of Application Of N. Walter Goins, filed June 11 and July 10, 1990, respectively, by N. Walter Goins ARE DENIED; that his Appeal from Presiding Officer's Interlocutory Ruling, Application for Resubmittal of Appeal from Presiding Officer's Interlocutory Ruling, Appeal of Petition For Leave to Amend Financial Qualifications of N. Walter Goins, Request for Permission to Submit Motion Under Section 1.525 and Request for Permission to File Motion Under Section 73.3555, filed June 15, July 10, July 10, July 13 (as supplemented July 19), and July 25, 1990, respectively, ARE DISMISSED; and,

12. IT IS FURTHER ORDERED, That the Motion to Strike Unauthorized Appeal from Presiding Officer's Ruling, filed June 20, 1990 by all parties to this proceeding except N. Walter Goins, IS DISMISSED as moot; and that the Motion to Strike filed June 26, 1990 by Southwest Suburban Broadcasting, Inc. IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] The multiple pleadings filed to the adoption date of this document are as follows: (1) Appeal from Presiding Officer's Interlocutory Ruling, filed June 11, 1990 by N. Walter Goins; (2) Appeal from Presiding Officer's Interlocutory Ruling, filed June 15, 1990 by N. Walter Goins; (3) Motion to Strike Unauthorized Appeal from Presiding Officer's Ruling, filed June 20, 1990 by J.H. Broadcast Limited Partnership, Roxanne Givens, Minnesota

Public Radio, Southwest Suburban Broadcasting, Inc., Anne M. Counihan, and Cove Communications, Inc.; (4) Motion to Strike, filed June 26, 1990 by Southwest Suburban Broadcasting, Inc.; (5) Application for Resubmission of Appeal from Presiding Officer's Interlocutory Ruling, filed July 10, 1990 by N. Walter Goins; (6) Appeal of Dismissal of Application of N. Walter Goins, filed July 10, 1990 by N. Walter Goins; (7) Appeal of Petition for Leave to Amend Financial Qualifications of N. Walter Goins, filed July 10, 1990 by N. Walter Goins; (8) Request for Permission to Submit Motion under Section 1.525, filed July 13, 1990 by N. Walter Goins; (9) Opposition to Appeal, filed July 18, 1990 by Nancy Jean Peterson; (10) Supplement to (8), filed July 19, 1990 by N. Walter Goins; (11) Opposition to (8) and (10), filed July 20, 1990 by Southwest Suburban Broadcasting, Inc., (12) Comments on (5), filed July 20, 1990 by Southwest Suburban Broadcasting, Inc.; (13) Opposition to (6), filed July 20, 1990 by Southwest Suburban Broadcasting, Inc.; (14) Opposition to (7), filed July 20, 1990 by Southwest Suburban Broadcasting, Inc.; (15) Opposition to (6), filed July 20, 1990 by JH Broadcast Limited Partnership; (16) Opposition to (8), filed July 24, 1990 by Minnesota Public Radio; (17) Request for Permission to File Motion under Section 73.3555, filed July 25, 1990 by N. Walter Goins (18) Reply to (16), filed July 25, 1990 by N. Walter Goins; (19) Consolidated Opposition to (8) and (17), filed August 2, 1990 by Minnesota Public Radio; (20) Reply to (19), filed August 7, 1990 by N. Walter Goins; and (21) Supplement to (16), filed August 16, 1990 by Minnesota Public Radio.

[2] Other basic qualifying issues against Goins' included:

> To determine whether N. Walter Goins' December 2, 1987 certification of his financial qualifications was false.
>
> To determine whether N. Walter Goins misrepresented facts or lacked candor in his trial exhibit, petition for leave to amend filed on May 30, 1990, and/or in his representations in open court in June 7, 1990, and if so, whether Goins is fit to receive a Commission license.
>
> To determine, in light of the evidence adduced under the foregoing issues, the effect thereof on the basic or comparative qualifications of N. Walter Goins to be a licensee.

[3] In addition to seeking Goins dismissal, the parties also represented that a settlement amongst the remaining applicants had been reached in principle. The ALJ noted that these settlement agreements were filed August 6, 1990. *Memorandum Opinion and Order*, FCC 90M-2458, released August 9, 1990.

[4] The agreement dated May 10, 1990 appended as an amendment (of the same date) to an assignment application filed April 30, 1990, by Halcomm, Inc. reflected that all of Halcomm's assets (encumbered as collateral for a loan from Dale W. Lang) were sold at a public sale on December 29, 1989 to Dale Lang for $4 million. After applying the proceeds to the obligations owed Lang, *there remained a $ 5. 6 million deficiency*. Halcomm also agreed to execute quit claim deeds to Lang and to transfer its FCC authorizations to any purchaser from Lang in return for Lang's agreement not to pursue or make a claim against Halcomm for the deficiency.

[5] With respect to this "cash held in trust," Goins disclosed:

> Represents amount held in Interest On Lawyers Trust Accounts by Dorsey & Whitney for the benefit of N. Walter Goins. Interest in this pooled account, net of any transaction costs, is required to be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court under Rule 1.15 of the Rules of Professional Conduct. Reflects most current statement showing activity for month of April 1990.

(The nature of this asset also raises questions as to whether these sums are readily available to Goins).

[6] Goins claims that these "securities" are as follows:

> Mr. Goins holds a 12.22% interest in Halcomm, Inc., a Minnesota Corporation. His shares were tendered with the corporation on December 5, 1988 in response to a notice of corporate action giving rise to certain shareholder rights under Minnesota law. According to a recent appraisal, Goins' share value is more than $2 million dollars. Goins' Halcomm shares are a "chose in action"; litigation may be required to receive share value.

[7] Goins reveals his calculus of "accrued interest" includes the following:

> As of April 1, 1989, the amount Mr. Goins claimed for his tendered Halcomm shares was not formally contested by the corporation. Minnesota law provides judgement interest (8% per annum) on the appraised value of tendered shares for which dissenters have not been paid. Interest is calculated based on 360 day year and a principal amount of $2,138,500.00.

[8] In some situations, non-liquid assets may be relied upon where "a party shows ownership of nonliquid assets several times the value of the cash which such assets are relied upon to yield." *International Broadcasting Co.*, 3 FCC Rcd 449, 451 (1965); *Cornwall Broadcasting Corp.*, 89 FCC 2d 704, 706 (Rev. Bd. 1982); *Cannon's Point Broadcasting Co.*, 93 FCC Rcd 2d 643 (Rev. Bd. 1983) (subsequent history omitted); *but cf. Christian Children's Network, Inc.*, 101 FCC Rcd 612, 614 (1985) ("entity committed to lend funds to applicant may demonstrate availability of such funds by relying upon projected proceeds from real estate, if it provides relevant appraisals and specifies the mortgages held against the real estate assets, without regard to the specific net worth ratio"). However, these considerations are obviously not applicable here.

[9] It should be noted that the ALJ is incorrect in his observation, (*see* para. 3 of FCC 90M-1921, *supra*), that an applicant adjudicated to be unqualified by a presiding officer is entitled to appeal without waiting for an order of dismissal. *See George E. Cameron, Jr. Communications*, 84 FCC 2d 345 (1981); *Magdalene Gunden Partnership*, FCC 86R-38, released June 10, 1986 (appeal dismissed where ALJ's ruling did not deny or terminate appellant's right to participate as a party to the proceeding). Section 1.251(e) of the Commission's Rules, 47 CFR § 1.251(e), governing summary decisions, provides that where "some of the issues (including no dispositive issue) are decided on a motion for summary decision," the ALJ's ruling is "interlocutory in character," and appeals thereto "are governed by § 1.301." Section 1.301, in turn, permits the filing of interlocutory appeals *only* if permission is first obtained from the presiding ALJ. Where permission is neither sought nor obtained, an appeal will not be considered unless the appealing party has demonstrated a flagrant abuse of discretion "as would inevitably require a reversal of the Initial Decision and a hearing *de novo*, or where the proceeding involves basic and far reaching considerations of public policy and vital concerns relating to the public interest which could not otherwise adequately be protected." *Communications Satellite Corp.*, 32 FCC 2d 533, 534 (1971); *see also Catalina Radio, a California Limited Partnership*, 4 FCC Rcd 8351 (Rev. Bd. 1989). Neither concern is directly raised here,

and had Goins' application not been subsequently dismissed, we would have dismissed Goins' initial appeal from the adverse summary decision ruling. To the extent, however, that *Mark L. Wodlinger*, 2 FCC Rcd 3196, 3197 at n. 1 (Rev. Bd. 1987) supports the ALJ's observation, we note only that the subsequent history of that case amply demonstrated the improvidence of nonadherence to our customary procedures. *See Mark L. Wodlinger*, 3 FCC Rcd 3139, 3143 ¶¶ 21-22 (Rev. Bd. 1988) (conceding earlier unawareness of the true facts underlying ALJ's ruling and pointing out our earlier ruling on merits of appeal was possibly erroneous).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-73

In re Applications of

RADIO SOUTH BURLINGTON, INC. File No. BPH-880126MG

MAXINE W. SNOW File No. BPH-880125NX

For Construction Permit for New
FM Station, Channel 263A,
Lebanon, New Hampshire

ORDER

Adopted: August 22, 1990; Released: August 31, 1990

By the Review Board: MARINO (Chairman), and ESBENSEN. Board Member BLUMENTHAL absent.

1. Before the Review Board are multiple documents filed by Susan E. Marcotte (who was made a party of this proceeding by the presiding officer in *Memorandum Opinion and Order*, FCC 90M-1987, released July 10, 1990). These documents are: Petition for Expedited Extraordinary Relief, filed July 16, 1990; Motion for Emergency Stay, filed July 17, 1990; and Petition to Hold in Abeyance, filed July 23, 1990.

2. In the last-filed document, Marcotte (noting that she had been assigned the burden of proceeding on certain character issues added against applicant Maxine W. Snow) requested that the Board hold in abeyance any action with respect to her other pending pleadings in light of a then-proposed settlement in this proceeding. Marcotte there noted (at p. 2) that in the event "Snow's application is dismissed . . . the issues presented by Ms. Marcotte . . . would be rendered moot."

3. By *Memorandum Opinion and Order*, FCC 90M-2652, issued August 22, 1990, the presiding officer approved a "Joint Request for Approval of [Settlement] Agreement" in which Snow's application was dismissed with prejudice, and the application of Radio South Burlington, Inc., was granted. In light of this disposition, Marcotte's pleadings will be dismissed.

4. ACCORDINGLY, IT IS ORDERED, That the documents set forth in paragraph 1, *supra*, filed by Susan E. Marcotte, on the dates indicated, ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-389

In the Matter of

Amendment of Section 73.202(b), RM-7339
Table of Allotments,
FM Broadcast Stations.
(Monticello, New York)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 15, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Markey Broadcasting Co., Inc. (petitioner), requesting the allotment of Channel 259A to Monticello, New York, as the community's second local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Channel 259A can be allotted to Monticello in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) west to avoid a short-spacing to Station WWWK, Channel 257A, Ellenville, New York.[1] Canadian concurrence is required since Monticello is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. We believe the public interest would be served by proposing the allotment of Channel 259A to Monticello, New York, since an interest has been expressed in providing the community with its second local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Monticello, New York	252A	252A, 259A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Markey Broadcasting Co., Inc.
P.O. Box 1259
Elmira, New York 14902
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 259A at Monticello are North Latitude 41-39-09 and West Longitude 74-43-34.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-390

In the Matter of

Amendment of Section 73.202(b), RM-7176
Table of Allotments,
FM Broadcast Stations.
(Larned, Kansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 15, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. Nancy J. Puopolo (petitioner) has filed a rule making petition requesting the substitution of FM Channel 295C1 for Channel 295A at Larned, Kansas. Petitioner also requests modification of her construction permit (BPH-881116MC) for Station KYSG to specify operation on Channel 295C1.

2. Channel 295C1 can be allotted to Larned, Kansas, in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[1] We shall also propose to modify the construction permit for Station KYSG to specify operation on Channel 295C1 in lieu of Channel 295A in accordance with section 1.420(g) of the Rules.

3. We believe that the public interest would be served by substituting Channel 295C1 for Channel 295A at Larned, Kansas, since it could provide the community with a wide coverage area station. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the following community:

	Channel No.	
City	Present	Proposed
Larned, Kansas	244A, 295A	244A, 295C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Nancy J. Puopolo
37 Martin St.
Rehoboth, Massachusetts 02769

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the

channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 295C1 at petitioner's specified site are 38-13-07 and 98-59-14.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-576

In the Matter of

Amendment of Section 73.202(b), RM-7058
Table of Allotments,
FM Broadcast Stations.
(Helena, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 15, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Hi-Line Radio Fellowship, Inc. (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8735 (1989), proposing the allotment of Channel *276C to Helena, Montana, and reservation of the channel for noncommercial educational use. Supporting comments were filed by the petitioner reiterating its intention to apply for the channel.

2. As stated in the *Notice*, generally, noncommercial educational stations operate within the reserved portion of the FM band (channels 201-220). Exceptions have been made in cases where the channels in the noncommercial educational band are not available because of foreign allocations (Canadian or Mexican) or potential interference to operations on VHF Television Channel 6. In this case, the potential interference to Station KTVM, Channel 6, Butte, Montana, appeared to justify the reservation of a commercial channel for noncommercial educational use. After a review of the comments and in light of the proximity of KTVM, we conclude that reservation of a commercial channel is justified. Channel *276C can be allotted to Helena in compliance with the Commission's minimum distance separation requirements without a site restriction.[1] Concurrence of the Canadian government has been obtained since Helena is located within 320 kilometers (200 miles) of the U.S.- Canadian border.

3. We believe the public interest would be served by the allotment of Channel *276C to Helena, Montana, since it could provide the community with its first noncommercial educational FM Channel. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 15, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Helena, Montana	258C1, 266C, *276C, 287C

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel *276C are 46-35-42 and 112-01-36. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, applicants for this allotment may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-391

In the Matter of

Amendment of Section 73.202(b), RM-7216
Table of Allotments,
FM Broadcast Stations.
(La Monte, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 17, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Valkyrie Broadcasting, Inc. (petitioner), requesting the substitution of FM Channel 246C3 for Channel 246A at La Monte, Missouri. Petitioner also requests modification of its construction permit (BPH-890313MM) for Station KOSY(FM) to specify operation on Channel 246C3.

2. We believe petitioner's proposal warrants consideration. Channel 246C3 can be allotted to La Monte, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] We shall also propose to modify the construction permit of Valkyrie Broadcasting, Inc. for Channel 246A to specify operation on Channel 246C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for La Monte, Missouri, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
La Monte, Missouri	246A	246C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Joey Anderson
Valkyrie Broadcasting, Inc.
Box 1420
Warsaw, Missouri 65355

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 246C3 are 38-45-09 and 93-18-09.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-392

In the Matter of

Amendment of Section 73.202(b), RM-7234
Table of Allotments,
FM Broadcast Stations.
(Lometa, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 17, 1990; Released: August 30, 1990

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Don Werlinger (petitioner) seeking the allotment of FM Channel 270A to Lometa, Texas, as that community's first local FM service. Petitioner stated his intention to apply for the channel, if allotted.

2. A staff engineering analysis has determined that Channel 270A can be allotted to Lometa in conformity with the minimum distance separation requirements of the Commission's Rules with a site restriction of 3.6 kilometers (2.3 miles) east of the city to avoid a short-spacing to Station KQXT(FM), Channel 270C1, San Antonio, Texas.[1] Mexican concurrence in the allotment is required because Lometa is located within 320 kilometers of the U.S. - Mexican border.

3. In view of the fact that Lometa could receive a first local FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Lometa, Texas	-----	270A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 22, 1990,** and reply comments on or before **November 6, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Don Werlinger
7819 Manassas Drive
Austin, Texas 78745
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates used for Channel 270A at Lometa, Texas, are 31-13-14 and 98-21-15.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: August 27, 1990

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON AT & T'S PETITION FOR INTERIM WAIVER OF REQUIREMENTS OF THIRD COMPUTER INQUIRY

On August 17, 1990, the American Telephone and Telegraph Company (AT&T) filed a petition for a limited six-month interim waiver of the Commission's *Computer III* requirements. AT&T states that it is in the process of acquiring certain assets of The Western Union Corporation (Western Union), and that the limited waiver is necessary to avoid disruption of services to certain Western Union customers.

AT&T states that Western Union currently uses the assets being purchased by AT&T to provide enhanced electronic messaging services such as electronic mail, Electronic Data Interchange, and information retrieval services. According to AT&T, these facilities are also apparently used to provide basic packet switching service.

Although Western Union is not required to comply with the *Computer III* requirements, AT&T must comply with these requirements. AT&T states that it will require additional time to compile information on the Western Union service offerings and analyze the associated revenue and cost data before it takes steps to comply with the *Computer III* requirements. AT&T adds that with the temporary waiver it will have sufficient time to prepare and file any necessary Comparably Efficient Interconnection (CEI) plan or to amend an existing approved CEI plan. AT&T argues that its waiver petition will serve the public interest by allowing Western Union's customers to continue obtaining services during this interim period on the same terms and conditions available prior to AT&T's acquisition of these assets.

AT&T requests that the Commission act on its petition expeditiously because the scheduled closing date for the acquisition is September 30, 1990, and AT&T believes that, without the waiver, it will be unable to offer the existing enhanced services to Western Union's customers after September 30, 1990.

Interested parties are to file comments on this petition by **September 6, 1990,** and reply comments by **September 11,** 1990, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of AT&T's petition can be obtained from ITS at (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: August 31, 1990

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for responding to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. Typically, these responses to individuals are not published in the FCC Record (*See* 0.445(a) of the rules).

These decisions are available for public inspection. Periodically, the Managing Director releases a Public Notice listing the decisions he has made on these matters. The decisions are placed in General Docket 86-285. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director decisions are released for information:

Ammerman Enterprises, Inc. - Request for refund of $6,000 hearing fee. Application for a construction permit for a new FM Station at Bay City, Texas - *Granted* (June 21, 1990)

California Innkeepers - Request for a waiver of $5.00 increase in fee for a renewal license for Sheraton Hotel and Conference Center - *Denied* (August 13, 1990)

Camp, Cary D. - Request for refund of $6,000 hearing fee for construction permit for a new FM station at Haughton, Louisiana - *Granted* (August 9, 1990)

Comsat General Corporation - Request for refund of filing fee to construct and operate a 3.5 meter earth station at Southbury, Connecticut and Santa Paula, California - *Denied* (June 27, 1990)

Cramer, Bill Dean - Petition for reconsideration for a new FM station at Independence, California requesting that Notice of Appearance and hearing fee be accepted as timely filed - *Granted* (June 29, 1990)

Group Three W, Inc. - Request for refund of $6,000 hearing fee for a new FM station at Topsail Beach, North Carolina - *Granted* (August 9, 1990)

Hometown Broadcasting Corp. - Request for refund of $500 filing fee for a power increase for station WSRD-FM at Johnston, New York - *Denied* (August 10, 1990)

Larue County Broadcasting (Keith Reising) - Request for a refund of filing fee submitted to relocate station WRZI(FM), Buffalo, Kentucky to Vine Grove, Kentucky - *Denied* (August 13, 1990)

Morlino, Ronald - Request for refund of hearing fee for a new FM station at Sunderland, Vermont - *Denied* (August 8, 1990)

New Milford Cablevision Company - Request for refund of $790.00 filing fee for request for significant viewership - *Granted* (August 10, 1990)

Orbital Communications Corporation (ORBCOMM) - Request for determination of appropriate fee in connection with the construction of a low orbital satellite system - *Partial Refund Granted* (August 13, 1990)

Parish, Lina M. - Request for refund of $6,000 hearing fee for a construction permit for a new FM station at Graceville, Florida - *Granted* (August 9, 1990)

Q Media Company-Paging, Inc. - Request for fee determination and refund for pro forma transfer of control - *Partial Refund Granted* (August 13, 1990)

Seymour Communications (J. Bazzel & Elizabeth Mull) -Request for refund of $6,760 hearing fee for a new FM station at Seymour, Tennessee - *Granted* (August 9, 1990)

Skytel Corporation - Request for fee determination, waiver and refund in connection with the assignment to Skytel of five Public Mobile Service licenses- *Partial Refund Granted* (August 13, 1990)

Sigmon, Jeffrey C. and Stewart, Steven C. - Request for refund of hearing fee for a new FM station at Kershaw, South Carolina - *Denied* (August 10, 1990)

Smith, Captain Russell W. - Request for a refund of filing fee in connection with filing a duplicate application for a Marine Radio Operators Permit - *Granted* (August 10, 1990)

Trinity River Valley Broadcasting - Request for refund of $6,000 hearing fee for construction permit for a new FM station in Liberty, Texas - *Granted* (August 10, 1990)

Troszak, Leslie - Request for refund of $565.00 filing fee paid for an amendment to an application for a construction permit for a new FM station of Plainview, Texas - *Granted* (August 10, 1990)

WCBM Maryland, Inc. (WCBM) (Bennett Gilbert Gaines) - Request for refund of a $6,000 filing fee for a Notice of Appearance in a comparative hearing - *Granted* (August 17, 1990)

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE E. PRIDE, ACTING CHIEF, FEE SECTION PH. 632-0241

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-403

In the Matter of

Amendment of Section 73.202(b),	RM-7279
Table of Allotments,	RM-7283
FM Broadcast Stations.	
(Atchison and Wathena, Kansas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 21, 1990; Released: September 4, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration are two separately filed and mutually exclusive petitions for rule making. The first proposal, filed by Lee Brandt (Brandt), requests the allotment of FM Channel 229A to Wathena, Kansas, as that community's first local aural service. The second proposal, filed by KARE Radio, Inc. (KARE), seeks the allotment of FM Channel 229A to Atchison, Kansas, as that community's first FM broadcast service.[1] The petitioners stated their intentions to apply for the requested channels, if allotted.

2. A staff engineering analysis has determined that Channel 229A can be allotted to Wathena consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 4 kilometers (2.5 miles) northwest of the community.[2] The site restriction will prevent a conflict with Station KLSI, Channel 227C, Kansas City, Missouri, and Station KFKF-FM, Channel 231C, Kansas City, Kansas. Alternatively, Channel 229A can be allotted to Atchison, Kansas, in conformity with the Commission's Rules, provided there is a site restriction of 13.8 kilometers (8.6 miles) northwest of the community.[3] The site restriction will prevent a conflict with Station KLSI, Channel 227C, Kansas City, Missouri, and Station KFKF-FM, Channel 231C, Kansas City, Kansas. However, both requests cannot be accommodated in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. The proposals are 28 kilometers apart whereas 115 kilometers are required between these two Class A co-channels. Therefore, we shall provide the proponents an opportunity to demonstrate in comments why their communities should receive the requested allotments. In this regard, the parties should be guided by the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

3. We believe that the public interest would be served by proposing the allotment of Channel 229A to Atchison or Wathena, Kansas, since this would result in a first local FM or first local aural service to these communities, respectively. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No. Present	Proposed
OPTION I		
Atchison, Kansas	----	229A
OPTION II		
Wathena, Kansas	----	229A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 26, 1990,** and reply comments on or before **November 13, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

John E. Carl
KARE Radio, Inc.
Rt. 2, Box 325B
Kellogg, Iowa 50135
(Petitioner)

Lee Brandt
206 Fremont Avenue
Wathena, Kansas 66090
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] KARE is also the licensee of Station KERE(AM), Atchison, Kansas.

[2] The coordinates for Channel 229A at Wathena are 39-47-51 and 94-57-19.

[3] The coordinates for Channel 229A at Atchison are 39-39-42 and 95-13-47.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-404

In the Matter of

Amendment of Section 73.202(b),	RM-7277
Table of Allotments,	
FM Broadcast Stations.	
(Park Falls, Wisconsin)	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 21, 1990; Released: September 4, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Northland Broadcasting, Inc. (petitioner), requesting the substitution of FM Channel 254C2 for Channel 252A at Park Falls, Wisconsin. Petitioner also requests modification of its license for Station WNBI-FM, Channel 252A, to specify operation on Channel 254C2.

2. We believe petitioner's proposal warrants consideration. Channel 254C2 can be allotted to Park Falls, Wisconsin, in compliance with the minimum distance separation requirements of the Commission's Rules at petitioner's specified site, which is located 10.4 kilomteters (6.5 miles) southeast of the community.[1] Since Park Falls is located within 320 kilometers (200 miles) of the U.S. - Canadian border, concurrence of the Canadian government will be requested. We shall also propose to modify the license of Station WNBI-FM, Channel 252A, to specify operation on Channel 254C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In view of the fact that the proposed allotment could provide a wide coverage area station for Park Falls, Wisconsin, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Park Falls, Wisconsin	252A	254C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **October 26, 1990,** and reply comments on or before **November 13, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Steve Walrath, General Manager
Northland Broadcasting, Inc.
P.O. Box 309
Park Falls, Wisconsin 54552

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 254C2 are 45-50-52 and 90-24-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-16

In the Matter of

Amendment of Section 73.202(b), RM-7119
Table of Allotments,
FM Broadcast Stations.
(Ogden, Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 21, 1990; Released: September 4, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 575 (1990), issued in response to a petition filed by Kaw Valley Broadcasting Company (petitioner), requesting the substitution of FM Channel 278C2 for Channel 278A at Ogden, Kansas.[1] Petitioner also requested modification of its license for Station KQLA to specify operation on the higher class Channel. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of FM Channel 278C2 for Channel 278A at Ogden, Kansas, since it could provide the community with its first wide coverage area FM service. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's proposed site.[2] As requested, we are authorizing a modification of petitioner's license for Station KQLA, Ogden, Kansas, to specify operation on Channel 278C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 19, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ogden, Kansas	278C2

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KQLA, Ogden, Kansas, IS MODIFIED to specify operation on Channel 278C2 in lieu of Channel 278A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] A *Report and Order* was adopted on December 13, 1989, in MM Docket 87-36, which modified the license for Station KQLA, Ogden, Kansas, to specify operation on Channel 278A in lieu of Channel 280A.

[2] The coordinates for Channel 278C2 at Ogden are 39-20-20 and 96-38-32. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-347

In the Matter of

Amendment of Section 73.202(b), RM-6721
Table of Allotments,
FM Broadcast Stations.
(Illinois City, Illinois)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 21, 1990; Released: September 4, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Martin F. Beckey, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6207 (1989), proposing the allotment of Channel 223A to Illinois City, Illinois, as that community's first local FM service. Petitioner failed to file comments restating his interest. Flambo Broadcasting, Inc. (Flambo), licensee of Stations KWPC(AM) and KFMH(FM), Muscatine, Iowa, filed opposing comments stating that Illinois City is not a community for allotment purposes.

2. As stated in the Appendix to the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making a new allotment absent an expression of interest. Therefore, since there has been no such interest here, we will dismiss the petitioner's proposal.

3. Accordingly, IT IS ORDERED, That the petition of Martin F. Beckey, requesting the allotment of Channel 223A to Illinois City, Illinois, IS HEREBY DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-136

In the Matter of

Amendment of Section 73.202(b), RM-6997
Table of Allotments,
FM Broadcast Stations.
(Destin, Florida and Fairhope,
Alabama)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 17, 1990; Released: September 4, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 4904 (1989), proposing, *inter alia*,[1] the reclassification of Station WMMK(FM), Channel 221A, Destin, Florida, to Channel 221C3, and modification of the license of Gulfcoast Broadcasting, Inc. (Gulfcoast), to specify the higher powered channel. WZEW, Inc. (WZEW), permittee of Station WZEW(FM), Channel 221A, Fairhope, Alabama, filed a counterproposal requesting the substitution of Channel 221C3 for Channel 221A at Fairhope, Alabama, and modification of its construction permit.[2] WZEW also filed reply comments and a continuing expression of interest. Gulfcoast filed supporting comments. Gulfcoast and WZEW filed a joint motion for expedited consideration. The Federal Aviation Administration ("FAA") also filed comments. [3]

2. WZEW, in its counterproposal, states that both Station WZEW(FM) and WMMK(FM) will be able to upgrade. WZEW states that the solution lies in imposing a site restriction on Station WZEW(FM) of 9.7 kilometers at 280 degrees from Fairhope, Alabama. WZEW contends that this site meets all the requirements under Section 73.315 of the Commission's Rules for Class C3 operation. WZEW states that it will have direct line of sight to Fairhope and will cover 81% of the 70 dBU predicted coverage contour. WZEW states that by permitting the C3 upgrade at Fairhope, Alabama, the Commission would enable the public to receive increased service from both WMMK(FM) and WZEW(FM).

3. In reply comments, WZEW states that Gulfcoast has informed WZEW that Gulfcoast has no objection to the proposal made in the WZEW counter-proposal, since it resolves the mutual exclusivity existing between the parties by imposing a site restriction on the WZEW site.

4. After consideration of the proposal and the comments and counterproposal filed in response to the *Notice*, we must address the issue of city-grade coverage and the site restriction proposed by WZEW. According to a staff engineering analysis, WZEW's proposed site is technically unacceptable because it will not provide the 70 dBU city-grade coverage required to the entire city of license. However, we have found an alternative site which meets all technical requirements for Station WZEW at Fairhope. In addition, there will not be any Channel 6 TV interference problems.

5. We believe the public interest would be served by allotting Channel 221C3 to Destin, Florida and by allotting Channel 221C3 to Fairhope, Alabama, providing each community with an expanded FM service. Channel 221C3 can be allotted to Destin in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) east of the community. Channel 221C3 can be allotted to Fairhope in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.1 kilometers (11.3 miles) west of the community.[4]

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 19, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel No.
Destin, Florida	221C3
Fairhope, Alabama	221C3

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WMMK(FM), Destin, Florida, IS MODIFIED to specify operation on Channel 221C3 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WZEW(FM), Fairhope, Alabama, IS MODIFIED to specify operation on Channel 221C3 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice*, issued on the Commission's own motion in MM Docket No. 89-133, *et al.*, proposed to amend the FM Table of Allotments for 149 Class A FM stations at various locations throughout the United States and territorial possessions by reclassifying their operations from Class A to Class C3 and proposing modification of their station authorizations, accordingly.

[2] Public Notice of the counterproposal was given on September 20, 1989, Report No. 1796.

[3] The FAA's comments addressed all of the communities under consideration as a whole, rather than denoting specific areas of concern. They were not served on the individual parties. Therefore, those comments violate the Commission's *ex parte* rules, and will not be considered as a separate filing in this proceeding. *See* 47 CFR § 1.1200 *et. seq. See also Bethel, Alaska*, 5 FCC Rcd 2546 (1990), footnote 3.

[4] The coordinates for Channel 221C3 at Destin are North Latitude 30-23-08 and West Longitude 86-24-52. The coordinates for Channel 221C3 at Fairhope are North Latitude 30-32-00 and West Longitude 88-05-30. Because these allotments are made as a result of a petition filed prior to October 2, 1989, and a *Notice of Proposed Rule Making* issued on the Commission's own motion prior to October 2, 1989, the licensee and permittee may avail themselves of the provisions of § 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ARC PROFESSIONAL SERVICES GROUP, INC. File No. 19-DSS-MISC-90

For Authority To Operate a Communications Satellite Providing Domestic Fixed Service at 62° W.L. on a Temporary Basis

ORDER AND AUTHORIZATION

Adopted: August 24, 1990; Released: September 4, 1990

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. ARC Professional Services Group, Inc. (ARC) has applied for authority to operate on a temporary basis the commercial C-band transponders on the TDRS-5 spacecraft, which is owned by Space Communications Company (Spacecom). No comments or oppositions were filed with respect to ARC's application. For the reasons discussed below, ARC's application is granted subject to certain conditions.

2. The tracking and data relay satellite (TDRS) system was developed by NASA to provide it with communications and data relay services in frequencies allocated for government use. The system is to consist of seven satellites, three of which are launched. Two of these, which are located at at 41° W.L. and 171° W.L., are operational; the third, which is located at 79° W.L., is an in-orbit spare. Each of the TDRS satellites also contains twelve transponders capable of operating on commercial C-band frequencies.

3. In 1983, ARC's predecessor, Systematics General Corporation (SGC), initially applied for authority to provide domestic commercial service using the C-band transponders on two TDRS satellites.[1] The Commission denied these requests because the TDRS satellites did not meet the technical requirements for domestic fixed-satellites.[2] The Commission indicated, however, that it would be willing to grant SGC temporary authority to operate the C-band transponders on the satellites until those locations were needed by the C-band satellite licensees to which they were regularly assigned. [3] The Bureau subsequently authorized SGC to provide domestic communications service to NASA via the TDRS satellites located at 41° W.L. and 62° W.L. until those locations were ready to be occupied by the regularly assigned licensee.[4] The TDRS satellite intended to be launched into 62° W.L. was instead launched into 79° W.L., and is not operating on C-band frequencies.

4. ARC now seeks temporary authority to use the C-band capacity on the TDRS-5 satellite, which is to be launched into 62° W.L. in January 1991, to provide domestic service to NASA. TDRS-5 is to replace the TDRS satellite currently operating at 79° W.L., which is nearing its end-of-service life. ARC states that while Spacecom, as the owner of the satellite, will be responsible for tracking, telemetry and control of the spacecraft, ARC will retain exclusive responsibility for the operation and control of the C-band transponders. ARC submits that grant of its request will allow it to make use of spectrum that would otherwise be unused, without prejudice to any party, and will allow it to provide NASA with a needed communications service. It also states that the substantial expenditure of public funds used to build the system will be wasted if the C-band transponders cannot be used.

II. DISCUSSION

5. Grant of ARC's request will serve the public interest, convenience, necessity. The Commission has previously allowed ARC to provide service to NASA using the C-band portion of the TDRS satellite that was to be located at 62° W.L., and the same considerations are involved here. TDRS-5 will be launched to provide government communications services regardless of our disposition of ARC's request. We see no reason to prevent ARC from using the C-band capacity of this satellite to serve NASA. No other domestic fixed-satellite licensee has sought to launch a more efficient satellite into that location. Moreover, no comments or objections have been filed with respect to ARC's request. Under these circumstances, denial of ARC's request would result in inefficient spectrum use and wasted in-orbit satellite capacity. However, as ARC acknowledges, ARC must cease operations on TDRS-5 not later than the date on which that location is to be occupied by the C-band satellite regularly assigned to that location, even if TDRS-5 has not exhausted its operational capability.

6. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commission's rules on delegations of authority, that Application File No. 19-DSS-MISC-90 IS GRANTED and ARC Professional Services Group, Inc. IS AUTHORIZED to operate the C-band transponders on TDRS-5 at 62° W.L. to provide domestic communications services to NASA subject to the following conditions:

(a) This authorization is subject to change in any of its terms or to cancellation in its entirety at any time upon reasonable notice, but without hearing, if, in the opinion of the Commission, circumstances should so require;

(b) this authorization will automatically terminate on the date on which 62° W.L. is ready to be occupied by a satellite licensee to which it is regularly assigned;

(c) no harmful interference shall be caused to any other regularly licensed U.S. national satellite facility or international satellite facility, and operation by ARC Professional Services Group shall cease immediately upon notification of interference;

(d) these C-band transponders may be used to provide domestic communications service to NASA and other governmental agencies only; and

(e) domestic operations are subject to the completion of appropriate international coordination procedures.

7. ARC Professional Services Group, Inc. is afforded thirty days from the date of the release of this order to decline this authorization as conditioned. Failure to respond within this time period will constitute formal acceptance of this authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Operations
Common Carrier Bureau

FOOTNOTES

[1] The SGC authorizations were later transferred to ORI, Inc. ORI, Inc. was then restructured into ARC Professional Services Group, Inc.

[2] Systematics General Corporation, 103 FCC 2d 879 (1985).

[3] *Id.* at para. 9.

[4] Systematics General Corporation, 2 FCC Rcd 7550 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-999

Released: September 4, 1990

COMMON CARRIER SERVICES INFORMATION

By the Chief, Common Carrier Bureau:

Upon initial review, the International Facilities Division and the Satellite Radio Branch have found the following applications acceptable for filing. The Commission reserves the right to return these applications, if, upon further examination, it is determined that they are defective and not in conformance with the Commission's rules and policies.

GEOSTAR POSITIONING CORPORATION File Nos. 46-DSS-P/LA-90
48-DSS-P/LA-90
43-DSS-MP/ML-90
44-DSS-MP/ML-90
51-DSS-EXT-90
52-DSS-EXT-90
CSS-90-012 (ML)
CSS-90-013 (ML)
CSS-90-014 (ML)
CSS-90-015(ML)

Geostar Positioning Corporation (Geostar) has applied to construct and launch two new dedicated radiodetermination satellite service (RDSS) satellites -- Geostars 1B and 2B. Geostar has also applied to modify its first two dedicated RDSS satellites as authorized in *Geostar Corporation*, Mimeo No. 6144 (released August 7, 1986), -- Geostars 1A and 1B. Geostar proposes to co-locate Geostars 1A and 1B and Geostars 2A and 2B. In addition, each satellite pair is to be launched together on the same payload assist module. Each of the dedicated RDSS satellites is to carry one inbound channel and one outbound channel and will have a single 3.5° by 7° coverage pattern that can be repointed while the satellite is in-orbit to serve user terminals either in the contiguous U.S. or in other points of the western hemisphere. The following frequency bands are requested:

	Center Frequency	Bandwidth	Polarization
user-to-satellite	1618.25 MHz	16.5 MHz	LHCP
satellite-to-user	2491.75 MHz	16.5 MHz	RHCP
telemetry/beacon	5141.5 MHz	1.0 MHz	Horizontal
satellite-to-control center	5183 (or 5174.25) MHz	16.5 MHz	Horizontal
telemetry/beacon	5224.5 MHz	1.0 MHz	Horizontal
telecommand	6526.5 MHz 6536.5 MHz	3.0 MHz	Vertical
control center-to satellite	6562.875 (or 6555.5) MHz	16.5 MHz	Vertical

Geostar states that the proposed design will result in a small reduction in satellite EIRP and G/T compared to the values specified for the dedicated RDSS satellites as initially authorized and will not increase the potential for interference to any other user of the spectrum. Geostar also states that the satellites will be capable of supporting hand-held user terminals and providing position determination by range measurements obtained through two satellites and altitude information obtained from a digitized terrain map or on-board altimeter. Finally, Geostar requests the following amended schedules for completing construction of and launching Geostars 1A and 1B and the following implementation schedules for Geostars 1B and 2B:

	Begin Construction	Complete Construction	Launch
Geostar 1A	. . .	October 1993	December 1993
Geostar 1B	January 1991	October 1993	December 1993
Geostar 2A	. . .	October 1994	December 1994
Geostar 2B	October 1991	October 1994	December 1994

GEOSTAR POSITIONING CORPORATION File Nos. 45-DSS-MP/ML-90
53-DSS-EXT-90

Geostar proposes to modify the license for its third dedicated RDSS satellite -- Geostar 3 -- as authorized in *Geostar Corporation*, Mimeo No. 6144 (released August 7, 1986), to conform the satellite-to-control center frequencies to the allocations made at the 1987 World Administrative Radio Conference for Mobile Services (MobileWARC-87). Specifically, Geostar requests a shift in the assigned frequencies for this link from 5117-5183 MHz to 5150-5216 MHz. All other parameters of the 5 GHz satellite-to-control center link are to remain the same as authorized. In addition, Geostar requests an extension of Geostar 3's construction completion milestone until October 1995 and its launch milestone until December 1995.

Comments or petitions concerning these applications may be filed on or before **October 10, 1990.** Replies may be filed on or before **October 31, 1990.** Responses may be

filed on or before **November 14, 1990.** Interested parties should submit an original and six copies of any document filed in response to this notice.

Copies of this application, as well as any pleadings filed pursuant to this notice, will be available for inspection in the International Facilities Division Public Reference Room, Room 533, 1919 M Street, N.W., Washington, D.C. and in the Domestic Facilities Public Reference Room, Room 6218, 2025 M Street, N.W., Washington, D.C.

For further information, contact Fern Jarmulnek at (202) 632-1624 or John Coles at (202) 632-7265.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-350

In re Applications of

Local Girls and Boys Broadcasting Corp. (hereafter "Girls & Boys")	File No. BPH-880815MT
Litchfield Associates (hereafter "Associates")	File No. BPH-880816NF
Litchfield Radio Group (hereafter "Group")	File No. BPH-880816NK
Furey Communications (hereafter "Furey")	File No. BPH-880816NM
Dianna Devlin Slodowitz (hereafter "Slodowitz")	File No. BPH-880816NT
Bantam River Broadcasting, Inc. (hereafter "Bantam")	File No. BPH-880816NV
Italo, Inc. (hereafter "Italo")	File No. BPH-880816OD
Radio Litchfield Limited Partnership (hereafter "Limited")	File No. BPH-880816OM
Field Broadcasting Co. (hereafter "Field")	File No. BPH-880816OO
Litchfield Radio Partners (hereafter "Partners")	File No. BPH-880816MO (DISMISSED HEREIN)

For Construction Permit for a
New FM Station on Channel 247A
in Litchfield, CT

HEARING DESIGNATION ORDER

Adopted: July 26, 1990; Released: September 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. Limited requests a waiver of the Commission's line-of-sight requirements (47 CFR 73.315(b)). Limited states that their proposed transmitter site would provide 70 dBu coverage to the entire area within the corporate limits of Litchfield, Connecticut in accordance with Commission rule 73.315(a), but because of the hilly terrain in and around Litchfield, some portions of the city will not have a line-of-sight to the proposed antenna. Further, Limited states that the separation criteria of Commission rule 73.207 require that the proposed transmitter be located at least three kilometers north of the corporate limits of Litchfield. Given this restriction and the nature of the terrain, a tower of prohibitive height would be required to establish a line-of-sight to each point within the city boundaries. The engineering showing provided by Limited demonstrates compliance with the Commission's line-of-sight requirements. Furthermore, line-of-sight coverage of the entire community of license in all cases is not an absolute requirement. *See e.g. Rush County Broadcasting Co., Inc.*, 26 FCC2d 480 (1970). Adequate coverage may still be obtained from the diffracted signal. Here, we believe that adequate coverage of Litchfield will be provided by Limited. Accordingly, their waiver request will be dismissed.

3. The applicants below have petitioned for leave to amend their application on the dates show. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Associates	May 31, 1989
Group	May 2, 1990
Bantam	June 19, 1989, July 11, 1989, August 10, 1989
Italo	March 15, 1989, May 23, 1989
Limited	May 24, 1989
Field	January 27, 1989, February 13, 1990

4. Our engineering study indicates that the proposed locations of Bantam's towers may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that Bantam may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment

(EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since Bantam's proposal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the cumulative effects of of the proposed operation and all nearby RF sources. In this regard, if the site is presently fenced in compliance with the guidelines, Bantam is required to so state and give the distance from the base of the tower to the fence. Accordingly, Bantam will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Section III of FCC Form 301 (October 1986) requires that an applicant certify that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue. Italo did not make this certification. Therefore, an issue will be designated to determine whether Italo is financially qualified.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Bantam in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine with respect to Italo, whether the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the request for waiver of the Commission's line-of-sight rules (47 CFR 73.315(b)) filed by Limited IS HEREBY DISMISSED.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 4 hereinabove, Bantam shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Group, Field, Bantam, Italo, Limited, and Associates ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That pursuant to Partners' request, their application, file BPH-880816MO, is hereby DISMISSED.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Partners, in correspondence dated December 14, 1988, requested that its application be dismissed. Partners submitted the statement of no consideration required by 47 C.F.R. § 73.3525(c). Its request will be granted below.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-347

In re Applications of

Lightning Bug Broadcasting (hereafter "Bug")	File No. BPH-880809MY
Profile Broadcasting Co., Inc. (hereafter "Profile")	File No. BPH-880809NC
North Country Communications Corp. (hereafter "North")	File No. BPH-880810MK
Lisbon Communications, Inc. (hereafter "Lisbon")	File No. BPH-880810MO

For Construction Permit for a
New FM Station on Channel 244A
in Lisbon, New Hampshire

HEARING DESIGNATION ORDER

Adopted: July 26, 1990; Released: September 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. The applicant below has petitioned for leave to amend its application on the dates shown. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Lisbon	September 20, 1989

3. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Profile has not completed Item 4 correctly. Profile's application gives a city and state as the residence address for Peter C. Aydelott, Judith F. Aydelott, and Alvah Fassett. Accordingly, Profile must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. Section III of FCC form 301 (October 1986) requires that applicants certify that they have sufficient net liquid assets on hand, or that sufficient funds are available from committed sources to operate the requested facility for three months without revenue. Bug and North failed to make this certification. Accordingly, an appropriate issue will be specified below.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Profile has indicated that its proposal will fail to maintain a direct line-of-sight between the proposed antenna and the community of licenses as required by 47 C.F.R § 73.315. Profile indicates that its "unshadowed" contour would cover approximately 80.4% of the community of license and of its population. The line-of-sight coverage of the entire community of license in all cases is not an absolute requirement. *See e.g. Rush County Broadcasting Co., Inc.*, 26 FCC 2d 480 (1970). Adequate coverage may still be obtained from a diffracted signal. Here, we believe that adequate coverage of Lisbon will be provided by Profile. Accordingly, their waiver request will be dismissed.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Bug and North, whether the applicants are financially qualified.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Lisbon IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That Profile shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

11. IT IS FURTHER ORDERED, That in light of the discussion in paragraph 6, above, Profile's request for waiver of 47 C.F.R. § 73.315 IS DISMISSED AS MOOT.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-348

In re Applications of

HARRY NELSON (hereafter "Nelson") File No. BPH-890524MI

DEVAUGHN TOOLE AND MARY L. TOOLE d/b/a TOOLE & COMPANY, A GENERAL PARTNERSHIP (hereafter "Toole") File No. BPH-890530MH

EUFAULA BROADCAST ASSOCIATES (hereafter "EBA") File No. BPH-890530MO

For Construction Permit for a New Commercial FM Station on Channel 251A in Eufaula, Alabama

HEARING DESIGNATION ORDER

Adopted: July 26, 1990; Released: September 4, 1990

1. The Commission has before it the above-captioned mutually exclusive applications for a new commercial FM station.

2. *EEO*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Nelson has filed such a statement, it is deficient in that it has not provided recruitment sources for minorities. Accordingly, Nelson will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

3. Since no determination has been received by the Federal Aviation Administration as to whether the antenna proposed by EBA would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made party to the proceeding.

4. *Late - filed amendment*. The following applicant petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after October 13, 1989, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
EBA	January 30, 1990

5. *Areas & Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by EBA would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Nelson shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

10. IT IS FURTHER ORDERED, That the petition for leave to amend filed by EBA IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance

stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-349

In re Applications of

SERAFIN DELACRUZ (hereafter "DelaCruz") — File No. BPH-880914MH

AGANA GUAM FM RADIO LIMITED PARTNERSHIP (hereafter "FM Radio") — File No. BPH-880914MX

For Construction Permit for a New FM Station on Channel 270C2 (101.9 mHz) in Agana, Guam

HEARING DESIGNATION ORDER

Adopted: July 26, 1990; Released: September 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. FM Radio filed an amendment on December 22, 1988 proposing, *inter alia*, to relocate the transmitter site. Applicants are afforded, as of right, the opportunity to amend their respective applications thirty days from the public notice date announcing tenderability. The application was placed on a public notice of tenderability on November 4, 1988, thus providing FM Radio until December 7, 1988 to amend its application. Amendments filed after this date may only be accepted for good cause or pursuant to 47 C.F.R. §§ 1.65 or 73.3514(b). FM Radio fails to make such showing. It merely refers to legislation (Public Law 19-36, dated December 18, 1988) passed by the Guam National Legislature. However, this reference does not clearly demonstrate the correlation between such legislation and FM Radio's proposed transmitter site. Therefore, the engineering protion of the December 22 amendment will be returned and a site availability issue specified regarding FM Radio's originally specified site. The remaining portion of the December 22 amendment, indicating a change in FM Radio's ownership structure, will be accepted. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from this amendment will be disallowed.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a a subsequent Order upon the following issues:

1. To determine whether FM Radio has reasonable assurance that the transmitter site specified in its original application will be available to it.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That FM Radio's amendment of December 22, 1988 IS ACCEPTED TO THE EXTENT INDICATED HEREIN AND RETURNED IN ALL OTHER RESPECTS.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall pursuant to Section 311 (a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 90-264

In the Matter of

Proposals to Reform the
Commission's Comparative
Hearing Process to Expedite
the Resolution of Cases

ORDER

Adopted: August 23, 1990; Released: August 24, 1990

By the General Counsel:

1. The Federal Communications Bar Association (FCBA) requests an extension of 30 days within which to file comments in this proceeding. The FCBA states that "it will be difficult, if not impossible" for it to develop the consensus of its membership necessary to prepare its comments by the current August 27, 1990 deadline for filing comments in this proceeding.

2. In establishing the comment dates in this proceeding, the Commission noted that "[e]xtensions of these time periods are not contemplated." However, that admonition must be balanced against the expected value of the FCBA's comments and the organization's need to develop a consensus of its membership. In these circumstances, we believe that the public interest will be served by an extension of the comment period until September 14, 1990.

3. Accordingly, IT IS ORDERED, that, pursuant to authority delegated in section 0.251 of the Commission's rules, 47 C.F.R. § 0.251, the "Motion for Extension of Time" filed by the Federal Communications Bar Association IS GRANTED, to the extent indicated above.

4. IT IS FURTHER ORDERED, that the time for filing Comments in this proceeding IS EXTENDED until September 14, 1990. Reply Comments will be due by October 15, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Sheldon M. Guttmann
Associate General Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 84-369

In the Matter of

Special Construction of Lines
and Special Service Arrangements
Provided by Common Carriers

ORDER

Adopted: January 9, 1990; Released: January 11, 1990

By the Commission:

I. INTRODUCTION

1. In this Order, we terminate the present proceeding in light of the fundamental changes that have taken place in the telecommunications industry since the proceeding was initiated and the record was compiled.

II. BACKGROUND

2. On April 30, 1984, the Commission released a Notice of Proposed Rule Making requesting comment on a proposal to modify the treatment of special construction of lines and special service arrangements offered by common carriers.[1] Among other things, the Commission proposed to grant carriers blanket Section 214 authorization for special activities[2] and have carriers file semi-annual reports listing such activities in lieu of reflecting them in their tariffs. [3] The Commission also proposed accounting and interconnection safeguards.

III. DISCUSSION

3. More than five years have passed since we compiled the record in this proceeding. During that period, there have been significant changes in the telecommunications marketplace and in our regulation of common carriers, including, among other things, the implementation of our Subscriber Line Charge program (which has greatly reduced concerns about uneconomic bypass),[4] and of our Joint Cost rules (which separate regulated and unregulated costs),[5] as well as the Commission's removal of the structural separation requirements for the provision of CPE and enhanced services by AT&T and the BOCs,[6] the Commission's implementation of price cap regulation for AT&T,[7] and the Commission's proposed adoption of price caps for local exchange carriers.[8] In light of these developments, we conclude that the record compiled in this proceeding has become stale. We, therefore, terminate this proceeding.

IV. ORDERING CLAUSE

4. Accordingly, IT IS ORDERED, that this inquiry into the Special Construction of Lines and Special Service Arrangements Provided by Common Carriers IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Special Construction of Lines and Special Service Arrangements Provided by Common Carriers, Notice of Proposed Rule Making, 97 FCC 2d 978 (1984) (Notice).

[2] Notice at 981, para. 4.

[3] Notice at 981-982, para. 4.

[4] *See, e.g.*, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987), *NTS Recovery Reconsideration*, 3 FCC Rcd 4543 (1988).

[5] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *recon.*, 2 FCC 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988).

[6] Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, *Report and Order*, 2 FCC Rcd 143 (1987), *recon.*, 3 FCC Rcd 22 (1988). Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., *Order*, 102 FCC 2d 655 (1985), *recon.*, 104 FCC 2d 739 (1986). Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987), *further recon.*, 3 FCC Rcd 1135 (1988), *second further recon.*, 4 FCC Rcd 5927 (1989).

[7] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873 (1989).

[8] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1147

In the Matter of

Long-Run Regulation
of AT&T's Basic
Domestic Interstate Services

ORDER

Adopted: January 9, 1990; Released: January 11, 1990

By the Commission:

I. INTRODUCTION

1. In this Order, we terminate the present proceeding in light of the fundamental changes that have taken place in the telecommunications industry since the proceeding was initiated.

II. BACKGROUND

2. On October 27, 1983, the Commission released a Notice of Inquiry requesting comment on the proper long-run regulation of AT&T's basic domestic interstate services.[1] The Notice did not propose to change any policies or rules regarding AT&T,[2] but, rather, was intended to initiate discussion of the future public interest regulation of AT&T in light of changes that had taken place in the telecommunications marketplace. [3] The Notice requested comment and information in four areas: (a) the costs and benefits of continuing the present form of regulation for AT&T through 1990; (b) possible options for reduced tariff and facility regulation; (c) the conditions under which the Commission should pursue each option; and (d) how to assess AT&T's market power.[4]

III. DISCUSSION

3. There have been fundamental changes in the telecommunications industry since initiation of this proceeding and compilation of the present record during late 1983 and 1984. These changes include implementation of AT&T's divestiture of its local exchange telephone operations pursuant to the Modification of Final Judgment, the widespread deployment of equal access for AT&T's competitors,[5] the installation of sophisticated nation wide fiber optic networks by MCI Telecommunications Corp. and U.S. Sprint Communications Co., as well as other companies,[6] and continued decreases in AT&T's share of the interstate long distance telecommunications market.[7] The record compiled six years ago is clearly stale. We, therefore, conclude that we should terminate this proceeding.

IV. ORDERING CLAUSE

4. Accordingly, IT IS ORDERED, that this inquiry into the Long-Run Regulation of AT&T's Basic Domestic Services IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Long-Run Regulation of AT&T's Basic Domestic Interstate Services, Notice of Inquiry, 95 FCC 2d 510 (1983) (Notice).

[2] Notice at 513, para. 5.

[3] Notice at 510, para. 1.

[4] Notice at 510, para. 1.

[5] "Trends in Telephone Service," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, at 15, Table 10, released August 16, 1989.

[6] "Fiber Deployment Update," Jonathan M. Kraushaar, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, released February 17, 1989.

[7] "AT&T's Share of the Interstate Switched Market," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, at 6, Table 3, released September 29, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-421

In the Matter of

Decreased Regulation of
Certain Basic Telecommunications
Services

ORDER

Adopted: January 9, 1990; Released: January 11, 1990

By the Commission:

I. INTRODUCTION

1. In this Order, we terminate the present proceeding in light of significant changes that have taken place in the telecommunications industry since the proceeding was initiated.

II. BACKGROUND

2. On January 9, 1987, the Commission released a Notice of Proposed Rule Making focusing on methods to reduce regulation of certain basic services offered by all dominant carriers.[1] The Notice requested comment on alternatives that would allow the Commission to identify services for which regulation should be lessened, and implement a general approach for reduced regulation of such services.[2] It also presented two examples of telecommunications services that might be subject to reduced regulation: (a) packet switched data transmission offerings; and (b) services offered pursuant to contracts awarded through competitive bidding. [3]

III. DISCUSSION

3. There have been sufficient changes in the telecommunications marketplace and regulation since the Commission initiated this proceeding that the record compiled almost three years ago has become stale. These developments include the implementation of price cap regulation for AT&T,[4] proposals for price cap regulation for the LECs,[5] the offering by AT&T of integrated service packages,[6] and competitive tariff offerings,[7] as well as well as changes in the extent and nature of interexchange competition. We, therefore, conclude that we should terminate this proceeding.

IV. ORDERING CLAUSE

4. Accordingly, IT IS ORDERED, that this proceeding concerning the Decreased Regulation of Certain Basic Telecommunications Services IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Decreased Regulation of Certain Basic Telecommunications Services, Notice of Proposed Rule Making, 2 FCC Rcd 645 (1987) (Notice).

[2] Notice at 645, para. 1

[3] *Id.*

[4] Policy and Rules Concerning Rates for Dominant Carriers, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873 (1989).

[5] *Id.*

[6] AT&T Communications, Revisions to Tariff F.C.C. No. 12, Memorandum Opinion and Order, 4 FCC Rcd 4932 (1989), *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 7928 (1989).

[7] *See, e.g.*, AT&T Communications, Transmittal No. 1445, Revisions to Tariff F.C.C. No. 16, 4 FCC Rcd 2231 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-405

In the Matter of

Amendment of Section 73.202(b), RM-7232
Table of Allotments,
FM Broadcast Stations.
(Kindred and Oakes, North Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 20, 1990; Released: September 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by CERM Broadcasting Corporation (petitioner), licensee of Station KDDR-FM, Channel 223C1, Oakes, North Dakota.[1] Petitioner requests the modification of its license by substituting Channel 224C3 for Channel 223C1 and changing its community of license from Oakes to Kindred, North Dakota. Petitioner states that it will apply for Channel 224C3, if allotted to Kindred.

2. Petitioner states that Oakes, with a 1986 estimated population of 2,030 persons, has two local radio stations, KDDR-FM and KDDR(AM), both licensed to petitioner. Kindred, according to municipal sources, has a September, 1989, estimated population of 569 persons, and no local radio service. Petitioner contends that the relocation of Station KDDR-FM's transmitter to Kindred will not result in the loss of any first or second aural service. However, the population it can serve, assuming maximum Class C1 facilities at Oakes and maximum Class C3 facilities at Kindred, will increase from 36,955 persons to 123,336 persons, while the area the station covers will decrease from 16,343 square kilometers to 4,735 square kilometers.[2] Petitioner states that the change in community and downgrade in channel class would result in a preferential arrangement of allotments under the dictates of both *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), and *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989).

3. Petitioner submits that Kindred has the social, economic and cultural indicia to qualify as a "community" for allotment purposes. It is governed by a council form of government, with its own police, ambulance, fire and sewer service. Further, petitioner states that the Kindred Public School District, a rural school district with 500 students, is based in Kindred. Additionally, Kindred has six churches, over twenty service clubs and organizations, such as the American Legion, a weekly newspaper, the Kindred Tribune, the Kindred State Bank, and numerous other businesses providing goods and services to the community's residents.

4. Based on the information before us, we find that Kindred, although small in population, qualifies as a "community" for allotment purposes. We also believe that comment should be solicited on petitioner's proposal. However, based on the information provided, we are unable to conclude tentatively that the public interest would be served by substituting Channel 224C3 for Channel 223C1 and realloting the channel from Oakes to Kindred. Petitioner should, therefore, address the question of whether, disregarding the existence of its present operation at Oakes, we would prefer a request for the allotment of a first local FM and first competitive service at Oakes over a first local aural service at Kindred. Oakes has a population four times greater than that of Kindred. Further, petitioner has not shown that the reallotment of the channel would provide any first or second aural service. Additionally, it appears that the increase in population served by a Kindred station is derived largely from service to the already well-served community of Fargo. As a result, petitioner should also submit information concerning the relative location of the two communities and the availability of reception services.

5. Channel 224C3 can be allotted to Kindred in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[3] Canadian concurrence is required since Kindred is located within 320 kilometers (200 miles) of the U.S.-Canadian border. As requested, we also propose to modify petitioner's license for Station KDDR-FM to change the community of license and specify Channel 224C3. The communities of Oakes and Kindred are separated by 100 kilometers whereas the required separation for first-adjacent Class C1 and C3 allotments is 144 kilometers. Therefore, the proposed allotment of Channel 224C3 to Kindred is mutually exclusive with the present allotment of Channel 223C1 at Oakes. In accordance with Section 1.420 of the Commission's Rules, we shall not accept competing expressions of interest for use of the channel at Kindred or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Kindred, North Dakota	--	224C3
Oakes, North Dakota	223C1	--

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **October 29, 1990,** and reply comments on or before **November 13, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036-2679
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] In MM Docket No. 89-12, the Commission's staff, acting under delegated authority, substituted Channel 223C1 for Channel 222C2 at Oakes, North Dakota, and modified the license for Station KDDR-FM to specify operation on the higher class channel. That action became effective on December 15, 1989. *See* 4 FCC Rcd 7820 (1989).

[2] Although Station KDDR-FM has filed an application (BPH-900315ID) to operate with Class C1 facilities, it currently operates with an ERP of four kilowatts and a HAAT of 46 meters, serving 3,179 people in an area of approximately 991 square kilometers.

[3] The coordinates for Channel 224C3 at Kindred are North Latitude 46-38-48 and West Longitude 97-00-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-381

In the Matter of

Amendment of Section 73.202(b), RM-6739
Table of Allotments,
FM Broadcast Stations.
(Amarillo, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 21, 1990; Released: September 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Amarillo Community Broadcasting Company (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 6677 (1989), proposing the allotment of FM Channel 265C1 to Amarillo, Texas, as the community's eighth local FM service. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if allotted. No other comments were received. Channel 265C1 can be allotted to Amarillo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by allotting Channel 265C1 to Amarillo, Texas, since an interest has been expressed in providing the community with an additional local service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 22, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Amarillo, Texas	226C1, 231C, 245C, 250C, 254C1, 265C1, 270C, 275C1

3. The window period for filing applications will open on **October 23, 1990,** and close on **November 23, 1990.**

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 265C1 at Amarillo, Texas, are North Latitude 35-12-30 and West Longitude 101-50-00. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-518

In the Matter of

Amendment of Section 73.202(b), RM-6964
Table of Allotments,
FM Broadcast Stations.
(Rutland, Vermont)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 21, 1990; Released: September 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Edward G. and Carol K. Pickett ("petitioners"), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 8262 (1989), proposing the substitution of Channel 233C3 for Channel 233A at Rutland, Vermont, and modification of their license for Station WKLZ(FM) to specify operation on the higher powered channel. Petitioners filed comments reiterating their intention to apply for Channel 233C3, if allotted. Rockledge Community Broadcasting, Inc. filed informal comments in opposition to the rule making.[1]

2. We believe the public interest would be served by substituting Channel 233C3 for Channel 233A at Rutland, Vermont, since it could enable Station WKLZ(FM) to expand its coverage area. Channel 233C3 can be allotted to Rutland in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) north of Rutland to avoid a short-spacing to Stations WMXR, Channel 230A, Woodstock, Vermont, WNYV, Channel 231A, Whitehall, New York, WHGC, Channel 232A, Bennington, Vermont, WZOU, Channel 233B, Boston, Massachusetts, WRAV, Channel 233A, Ravena, New York, to a recently granted construction permit on Channel 234A at Lake Luzerne, New York, and pending applications for Channel 287C2 at Killington, Vermont.[2] As proposed, we are also modifying the license of Station WKLZ(FM) to specify operation on Channel 233C3 in lieu of its present Channel 233A. Canadian concurrence in the allotment has been received since Rutland is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 22, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Rutland, Vermont	233C3, 246C2, 251C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKLZ(FM), IS MODIFIED, effective **October 22, 1990,** to specify operation on Channel 233C3 in lieu of Channel 233A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] These comments were not filed in accordance with the requirements of Section 1.420(c) of the Commission's Rules and paragraph 4 of the Appendix to the *Notice of Proposed Rule Making* because they were not served on the petitioners. We have, however, reviewed the comments and conclude that they concern an essentially private dispute about an unpaid promissory note. This dispute has no bearing on the issue of whether the public interest would be served by an upgraded service at Rutland. Therefore, the comments will not be further considered in this proceeding.

[2] The coordinates for Channel 233C3 at Rutland are North Latitude 43-46-42 and West Longitude 72-55-49. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-447

In the Matter of

Amendment of Section 73.202(b), RM-6848
Table of Allotments,
FM Broadcast Stations.
(Coushatta, Louisiana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 7, 1990; Released: September 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of James G. Bethard (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 7481 (1989), proposing the substitution of Channel 235C3 for Channel 222A at Coushatta, Louisiana, and the modification of his construction permit for Station KSBH-FM to specify operation on the higher powered, non-adjacent channel. The petitioner and Oakdale Limited Partnership ("OLP"), licensee of Station KICR, Channel 254C2, Oakdale, Louisiana, filed comments and petitioner filed reply comments.

2. Petitioner reiterates his intention to apply for Channel 235C3, if allotted to Coushatta. As stated in the *Notice*, the modification of Station KSBH-FM's license from Channel 222A to Channel 235C3 constitutes a non-adjacent upgrade. Therefore, in order to facilitate the modification of his construction permit, petitioner stated that Channel 253C3 could also be allotted to Coushatta should another party express interest in the use of Channel 235C3. OLP does not object to the modifiction of petitioner's construction permit for Station KSBH-FM to specify operation on Channel 235C3. However, it does object to the allotment of Channel 253C3 to Coushatta for use by any other interested parties. OLP states that it desires to upgrade its Station KICR from Channel 254C2 to Channel 254C1 but that the two communities are insufficiently far apart to enable the allotment of Channel 254C1 to Oakdale and Channel 253C3 to Coushatta.

3. In reply comments, petitioner notes that no other party stated an interest in use of Channel 235C3 at Coushatta. Therefore, its construction permit can be modified to specify Channel 235C3 without allotting an additional equivalent class channel. Thus, petitioner states that it has no objection to OLP pursuing the allotment of Channel 254C1 to Oakdale.

4. We believe the public interest would be served by substituting Channel 235C3 for Channel 222A at Coushatta, since it could enable Station KSBH-FM to expand its coverage area. As proposed, we will also modify petitioner's construction permit to specify operation on Channel 235C3. Channel 235C3 can be allotted to Coushatta in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station KSBH-FM's construction permit.[1] We will not allot Channel 253C3 to Coushatta since no other party expressed a competing interest in applying for Channel 235C3. Further, we have accepted OLP's comments herein requesting the substitution of Channel 254C1 for Channel 254C2 at Oakdale as a petition for rule making (RM-7250) and it will be the subject of a separate Notice of Proposed Rule Making.

5. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 22, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Coushatta, Louisiana	235C3

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of James G. Bethard for Station KSBH, Coushatta, Louisiana, IS MODIFIED to specify operation on Channel 235C3 in lieu of Channel 222A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates for Channel 235C3 at Coushatta, Louisiana, are 31-56-49 and 93-20-13. Since the petition which resulted in this allotment was filed prior to October 2, 1989, the permittee may avail himself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

Local Exchange Carriers' Individual
Case Basis DS3 Service Offerings

ORDER

Adopted: August 29, 1990; Released: August 29, 1990

By the Chief, Common Carrier Bureau:

1. On August 6, 1990, the Commission released an Order[1] directing, *inter alia*, certain carriers providing "dry fiber" services, also described as "dark fiber," to file tariff revisions that establish generally available, averaged rates for their dark fiber service not later than 30 days from the release date of the *Reconsideration Order*.[2] That date is September 5, 1990.

2. The carriers required to file general rates for dark fiber service are Bell Atlantic, BellSouth, Southwestern Bell, and U S West. These carriers have filed petitions for waiver of the filing requirement.

3. The petitions were filed between August 16 and August 27, 1990. [3] Under Section 1.45(a) of our rules, 47 C.F.R. § 1.45(a), parties opposing petitions may file oppositions no later than ten (10) days after the petition is filed. Accordingly, we are deferring to October 1, 1990, the date Bell Atlantic, BellSouth, Southwestern Bell, and U S West must file general tariff rates for dark fiber service to enable us to consider the waiver request and any oppositions that may be filed. This action should not prejudice any parties since existing dark fiber ICBs will remain intact until they expire, or until one year from the release date of the *Reconsideration Order*, whichever comes first. This Order in no way affects the carriers' responsibility to abide by all other requirements and deadlines set out in the *Reconsideration Order*.

4. Therefore, IT IS ORDERED that the *Reoconsideration Order* provision requiring Bell Atlantic, BellSouth, Southwestern Bell, and U S West to file general rates for dark fiber service not later than thirty days from the release date of that Order, IS WAIVED, and Bell Atlantic, BellSouth, Southwestern Bell, and U S West SHALL FILE general rates for dark fiber service, to be effective on 45 days' notice, not later than October 1, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Local Exchange Carriers' Individiual Case Basis DS3 Service Offerings, CC Docket No. 88-136, FCC 90-270, Memorandum Opinion and Order on Reconsideration, released Aug. 6, 1990 (*Reconsideration Order*).

[2] *Reconsideration Order* at para. 33.

[3] The following waiver petitions were filed by carriers: Bell Atlantic, filed August 20, 1990; BellSouth, filed August 22, 1990; Southwestern Bell, filed August 27, 1990; U S West, filed August 16, 1990, and Errata filed August 22, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application for Review
of the Denial of a Petition to Deny
the Applications of

PANHANDLE EASTERN PIPE LINE COMPANY
for MAS Frequencies

File Nos. 741253-741266
MPD-2677

ORDER

Adopted: August 7, 1990; Released: September 5, 1990

By the Commission:

1. The Commission has before it for consideration the Utilities Telecommunication Council's (UTC's)[1] December 15, 1989, Application for Review of a Private Radio Bureau (Bureau) *Memorandum Opinion and Order (Order)*, 4 FCC Rcd 8087 (1989).[2] The Bureau's *Order* denied UTC's petition for reconsideration of a ruling that found Panhandle Eastern Pipeline Company (Panhandle) to be eligible in the Power Radio Service for the fourteen (14) multiple address system frequency pairs requested in the captioned applications.

2. The Application for Review essentially restates arguments made in UTC's earlier pleadings, which were thoroughly addressed in the Bureau's *Order*. We have reviewed the Bureau's action denying UTC's petition and find no error. Briefly, UTC asserts that Panhandle, to be a Power Radio Service eligible, must be chiefly engaged in the distribution of natural gas. Section 90.63(a) of this Commission's Rules, 47 C.F.R. § 90.63(a), confers Power Radio Service eligibility to entities "primarily engaged" in the distribution of natural gas.

3. While it is true that "primarily" often means the principal business activity of an entity, this is not always the case. Another accepted and common meaning of "primarily" is "substantial[ly]".[3] Here, the record clearly indicates that Panhandle is engaged in a substantial, *bona fide*, way in the distribution of natural gas to the public. UTC has presented no evidence that Panhandle has undertaken its distribution activities merely as a pretext to circumvent the eligibility rules.[4] Indeed, on the facts in this record, it would have been difficult for the Bureau to conclude that one of Panhandle's regular or integrated or substantial business activities is not the distribution of natural gas to the public and others as contemplated by Section 90.63(a)(2).[5] We conclude, therefore, that Panhandle is eligible for licensing under Section 90.63(a)(2).[6]

4. Accordingly, IT IS ORDERED that pursuant to Section 1.115(g) of this Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review, as supplemented, IS DENIED and the Bureau's *Order* IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] UTC states that it is a trade association with over 2000 electric, gas, water and steam utility members, which it represents on telecommunications matters at the national level.

[2] UTC filed a Supplement on April 26, 1990, with a Motion for Leave to File Late Pleading. Panhandle filed Oppositions to UTC's Motion and Supplement on May 9, 1990, and UTC filed a Reply on May 21, 1990. Also before this Commission is UTC's December 15, 1989, Motion for Expedited Action, Panhandle's December 26, 1989, Opposition to UTC's Motion, Panhandle's January 2, 1990, Opposition, and UTC's January 2, 1990, Reply to Opposition to UTC's Motion.

[3] Board of Governors of the Federal Reserve v. Agnew, 329 U.S. 441, 446-47, 67 S.Ct. 411, 91 L.Ed. 408 (1947). *See also* Securities Industry Association v. Board of Governors of the Federal Reserve, 847 F.2d 890, 895 (D.C. Cir. 1988).

[4] UTC's Supplement brings to our attention a 1981 Securities and Exchange Commission (SEC) declaration that Panhandle is not a gas utility company within the meaning of Section 2(a)(4) of the Public Utility Holding Company Act of 1935 (PUHCA). We deny UTC's Motion for Leave to File Late Supplement. The information presented therein has been a matter of public record for almost ten years and could have been timely filed. Even assuming we were to accept UTC's late Supplement, we find no inconsistency, as alleged by UTC, with Panhandle's request here for Power Radio Service channels and its 1981 request before the SEC for a declaration that its industrial and rural distribution business did not rise to a level warranting SEC regulation as a retail utility under the PUHCA. This Commission's eligibility rules focus on eligibility-conferring activities. This Commission's determination that Panhandle is eligible for Power Radio Service channels does not rest on whether Panhandle's distribution sales warrant the status as a utility company under another agency's statutory framework.

[5] Moreover, where local distribution and cross-country natural gas transmissions are combined as part of a single integrated operation, the distributor is eligible for frequencies in the Power Radio Service. *See* Memorandum Opinion and Order, 42 FCC 434 (1954).

[6] Even if we were to agree with UTC's argument that Panhandle is not primarily engaged in the distribution of natural gas to the general public or members of a cooperative organization, we believe that a waiver of the rule to permit the use of these frequencies to facilitate gas distribution would be appropriate. Our licensing records show that General Pool channels are not available in many of the areas where Panhandle needs MAS channels. No party disputes the benefits to the public that would flow from Panhandle's use of these frequencies in its Electronic Gas Measurement (EGM) system. *See* Panhandle Opposition to Application for Review (Statements of R. D. Young and F. R. Krentzel, Staff Engineers). Moreover, under the terms of the *Order*, which Panhandle does not contest, Panhandle is only permitted to utilize these frequencies for communications relating to the *distribution* of natural gas. Thus, the purpose of Section 90.63(a)(2) of the rules is furthered. *See* Thomas Radio v. FCC, 716 F.2d 921 (D.C. Cir.

1983); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969). Under the special circumstances here present, we believe that waiver, if necessary, would better serve the public interest. *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-182

In re Applications of

DOYLAN FORNEY	File No. BPCT-850213KF
TOLLESON BROADCASTING CORP.	File No. BPCT-850215KL
TOLLESON-GOMEZ COMMUNICATIONS, INC.	File No. BPCT-850215KN
ALDEN TELEVISION, INC.	File No. BPCT-850215LA
HECTOR GARCIA SALVATIERRA, LIMITED PARTNERSHIP	File No. BPCT-850215LB
AZTEC BROADCASTING CORP.	File No. BPCT-850215LG
ESTRELLA COMMUNICATIONS	File No. BPCT-850215LK
MARICOPA MEDIA, INC.	File No. BPCT-850215LL
T.V. BROADCASTERS, INC.	File No. BPCT-850215LM
LI-COM LIMITED PARTNERSHIP	File No. BPCT-850215LN

For Construction Permit for a New UHF Television Station at Tolleson, Arizona

MEMORANDUM OPINION AND ORDER

Adopted: August 27, 1990; Released: September 5, 1990

By the Commission: Commissioner Marshall not participating.

1. Nine applicants remaining in this proceeding are being considered comparatively for a construction permit for a new UHF television station to serve Tolleson, Arizona.[1] The presiding administrative law judge concluded that Aztec Broadcasting Corp. (Aztec) was the best qualified because of its "quantitative integration enhancements." *Initial Decision* (hereinafter *I. D.*), 2 FCC Rcd 6935, 6948 (ALJ 1987). The Review Board came to a different conclusion in its decision on exceptions, holding that Hector Garcia Salvatierra, Limited Partnership (HGS) was the only applicant entitled to 100 per cent integration credit, and it granted the HGS application. *Decision*, (hereinafter *R. B.*), 3 FCC Rcd 6330, 6338 (Rev. Bd. 1988). Eight applicants have filed applications for review of the Board's decision. In addition, LI-COM Limited Partnership has filed a motion for leave to amend its application, and other parties have filed procedural motions.[2] We have considered all of the arguments advanced by the parties, and we affirm the Board's decision except as modified below.

Estrella and LI-COM

2. Estrella Communications Limited Partnership (Estrella) and LI-COM Limited Partnership (LI-COM) challenge the Board's decision not to treat their limited partnership interests as passive investments. Estrella's two attorneys of record in this case were limited partners in Estrella until after the application was designated for hearing. Although they withdrew as limited partners before amended attribution rules adopted in *Attribution Reconsideration Order*, 58 RR 2d 604 (1985), became effective.[3] the Board based its decision on their role when they were limited partners. 3 FCC Rcd at 6332 ¶ 12. LI-COM's limited partnership agreement allowed the limited partners to terminate and dissolve the partnership or sell the partnership's assets. The ALJ had found that this did not sufficiently insulate the general partners from influence or control by the limited partners, and the Board agreed, citing *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981). 3 FCC Rcd at 6333 ¶ 17.

3. Estrella and LI-COM complain that the Board retroactively applied a changed policy regarding attribution of the interests of limited partners. Citing *Attribution of Ownership Interests*, 97 FCC 2d 997, 1023 (1984) (*Attribution*), they maintain that, when they were formed and as of the "B" cut-off date, the Commission did not attribute the interests of limited partners in a partnership conforming to the insulation requirements of the Revised Uniform Limited Partnership Act of 1976 (RULPA). They maintain that their partnership agreements did conform to that standard and that the Board improperly based its decision on stricter standards that the Commission adopted at a later time.

4. The Board correctly relied on *Anax Broadcasting*, 87 FCC 2d 483 (1981),[4] which was decided several years before Estrella and LI-COM executed their partnership agreements. The Commission held in *Anax* that the interests of limited partners are not relevant to integration credit if the limited partners are merely passive investors without power to control the applicant. *Id.* at 488. Conversely, the interests of nominally "limited" partners who, in fact, are not mere passive investors must be factored into the integration anaylsis. The analysis in *Attribution* and the later reconsideration of that report are consistent with the *Anax* standard. *See Magdalene Gunden*, 3 FCC 2d 7186, 7186 ¶ 6 (1988), recon. denied, 5 FCC Rcd 2509 (1990). Nothing that the Commission said in *Attribution* has changed the basic principle of *Anax*: only purely passive interests are exempt from attribution in comparative cases.

5. Estrella's and LI-COM's asserted reliance on their conformance to the RULPA standard from *Attribution* is misplaced. When they executed their limited partnership agreements and filed their applications in 1985, the Commission had not applied *Attribution* to integration issues in comparative proceedings. *Attribution* addressed interests subject to the Commission's multiple ownership rules, see 97 FCC 2d at 999 ¶ 2, but did not address the implications of its analysis on integration issues in comparative cases. When the Commission first used standards from the attribution proceeding in deciding comparative integration issues, in the 1986 decision in *Daytona Broadcasting Co., Inc.*, 103 FCC 2d 931, 934-35 and n. 6 (1986), it had already determined that compliance with RULPA should no longer be considered as a basis for determining attribution of limited partners. Thus, at no point did the Commission ever rely on the RULPA to determine integration issues in the comparative hearing process. *See Attribution Reconsideration*, 58 RR 2d at 618.

6. Even if *Attribution* had been applicable to integration issues in the comparative hearing process when Estrella and LI-COM filed their applications, conformance with RULPA was only one prong of a two-prong test for determining passive interests. The interests of limited partners would be disregarded if their partnership agreement conformed with the RULPA guidelines *and* the limited partners were not involved "in any material respect in the management or operation" of the entity. *Attribution*, 97 FCC 2d at 1023 and 1051 Appendix C note 2(g). Compliance with RULPA was only a "threshold verification standard," *Attribution Reconsideration*, 58 RR 2d at 607 ¶ 5; it did not, by itself, show that the limited partners were sufficiently insulated from influence or control over partnership affairs. Indeed, the Commission eliminated the RULPA threshold standard because RULPA did not adequately insulate limited partnership interests and its requirements were subsumed by the "no material involvement" standard. *Attribution Reconsideration*, 58 RR 2d at 618. The latter is fully consistent with the basic *Anax* standard.

7. In addition, although LI-COM makes a point of its conformance with RULPA, its partnership agreement does not conform in all respects. Section 7.4 (b) of its limited partnership agreement is inconsistent with section 801 of RULPA. Section 7.4(b) gives LI-COM's limited partners exclusive authority to cause the termination and dissolution of the partnership by a vote of a majority-in-interest of the limited partners. 3 FCC Rcd at 6332 ¶ 13, quoting from *I. D.*, 2 FCC Rcd at 6945, ¶ 127. RULPA § 801(2) requires the written consent of all partners, including the general partners, for dissolution, if the partnership is not dissolved by the happening of events specified in the certificate of limited partnership, the withdrawal of a general partner, or a decree of judicial dissolution. Thus, even if compliance with RULPA were controlling here, LI-COM has not met the standard it advocates.

8. As an alternative to its RULPA argument, LI-COM contends that the Board erred in concluding that its limited partners are in a position to exert control. It points to section 9.1 of its Limited Partnership Agreement, which allows the limited partners to remove a general partner in only four situations. However, LI-COM does not dispute the finding that section 7.4 of its partnership agreement gives the limited partners the right to dissolve the partnership or to sell some or all of its assets without the concurrence of the general partners. *See R. B.*, 3 FCC Rcd at 6332 ¶ 13, quoting from *I. D.*, 2 FCC Rcd at 6945 ¶ 127. That unchallenged finding is of critical importance. By virtue of their power to take the station from the general partners without their consent, the limited partners have more than a purely passive interest. For example, in exercise of their prerogative, they could sell all of the partnership assets to themselves for a negligible price, thereby stripping the general partners of their share of the assets without recompense. The possession of power over the general partners distinguishes this case from *Chester Associates*, 62 RR 2d 1315 (Rev. Bd. 1987), and *Independent Masters, Ltd.*, 104 FCC 2d 178 (Rev. Bd. 1986), cited by LI-COM, where the Board found that the role and intent of the limited partners were consistent with the Commission's attribution requirements although the specific language of the limited partnership agreements did not include the provisions required in *Attribution Reconsideration*. Here, we cannot make the same finding about the role and intent of the limited partners. The partnership agreement gives the limited partners such leverage over the general partners as to belie any contention that the latter are insulated from influence. For this reason, the *Anax* standard is not met, and the interests of the limited partners must be considered in the integration analysis.

9. Estrella looks to *Independent Masters* to argue that the Board's decision was erroneously retroactive. The Board had said in *Independent Masters*, 104 FCC 2d at 189 n. 25, that certain recently-adopted insulation requirements would only be applied prospectively, a policy that the Commission specifically rejected in *Cotton Broadcasting*, 4 FCC Rcd 1781, 1784 ¶ 23 (1989). The Board also said in *Independent Masters* that it would look to the *bona fides* of the limited partnership agreement. It did that here when it looked at the active role actually played by the limited partners in representing Estrella before the Commission. The fact that Estrella's attorneys purchased their limited partnership interests, and did not receive them as consideration for their services, which Estrella emphasizes, has no bearing on their role or on the pertinence of the Commission's consistent policy that integration analysis should encompass all owners whose roles are not purely passive.

10. Estrella also asserts that the Board's decision is contrary to the Commission's ruling in *Victory Media, Inc.*, 3 FCC Rcd 2073 (1988). There the Commission found that the lack of documentation of the applicant's intention to have both voting and non-voting stock was not fatal to the applicant's integration proposal. In that narrow context, it awarded full integration credit to the applicant's voting stockholder, although one of the applicant's non-voting stockholders had served as legal counsel for several months after the "B" cut-off date and the designation order. None of the parties had addressed the significance of the non-voting stockholder's participation in the applicant's affairs, however, and the Commission did not focus on that point. In *Coast TV*, 5 FCC Rcd 2751, 2752 ¶ 15 (1990), the Commission expressly overruled any suggestion in *Victory Media* that it would disregard the involvement of an allegedly passive owner in an applicant's activities after the applicant had adopted a bifurcated form of business onwership, such as a limited partnership. *See Magdalene Gunden Partnership, supra*, 5 FCC Rcd at 2510 ¶ 15. The attorneys' active representation of Estrella before the Commission, while holding a

limited partnership interest in Estrella, requires consideration of their interests for comparative integration purposes. *See Tulsa Broadcasting Group*, 2 FCC Rcd 6124, 6129 ¶ 27 (Rev. Bd. 1987), rev. denied, 3 FCC Rcd 4541 (1988); *Clarification*, *supra*.

11. Although, as Estrella points out, its attorneys divested their limited partnership interests shortly after the Commission adopted *Attribution Reconsideration* and no longer have any ownership interest in Estrella, they divested after the "B" cut-off date. The Commission's policy against comparative upgrading requires the Commission to consider Estrella's status as of the "B" cut-off. *See Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212, 216 (Rev. Bd. 1984), aff'd in pertinent part, 101 FCC 2d 1010 (1985).

LI-COMs Motion for Leave to Amend

12. While the applications for review were pending before us, and long after the "B" cut-off date for amending applications as a matter of right, LI-COM filed a motion for leave to amend its application to show that its partners had altered the terms of its partnership agreement in certain respects, most notably by depriving the limited partners of the power of selling or transferring partnership assets without the general partners' consent. LI-COM asserts that the amendment serves to conform its partnership agreement to current insulation requirements. HGS, Estrella, and Aztec oppose granting the motion. We will deny the motion.

13. To justify acceptance of an amendment tendered after the "B" cut-off date, an applicant must show good cause. 47 C.F.R. § 73.3522(b); *Erwin O' Connor*, 22 FCC 2d 140, 143 (Rev. Bd. 1970). One of the elements of good cause[5] is that the applicant would gain no comparative advantage. It is a firm policy of the Commission that amendments are not to be used as vehicles for belated comparative upgrading. LI-COM would gain a comparative advantage from the amendment in question if we were to accept and consider it at face value, for the amendment is designed to cure the fundamental defect in its integration proposal that we have discussed above.

14. LI-COM contends, however, that the Commission recently allowed an applicant to amend under analogous circumstances in *Cotton Broadcasting Co.*, 4 FCC Rcd 1781 (1989). One of the considerations in that case was the evolving nature of the insulation requirements and the unfairness of penalizing an applicant for failing to comply with subsequently announced requirements. *Id.* at 1784 ¶ 23. LI-COM points out that its agreement, too, was formed before the Commission adopted those later requirements and contends that it would be equally unfair to judge its agreement against them without accepting the instant conforming amendment.

15. There is a crucial distinction, however, between the two cases in the effect of the proposed amendments on the comparative positions of the applicants. In *Cotton*, there was no attempt to insulate limited partnership interests from attribution. Because one of the three general partners also held the only limited partnership interest and had power to discharge the other general partners, the Commission considered whether the other general partners had the management authority they claimed in their integration proposal. When it concluded that they did, it agreed that the ALJ had properly accepted an amendment redistributing the limited partnership interest among all three of the general partners and modifying the powers of the limited partnership interests. 4 FCC Rcd at 1782-83 ¶¶ 15-17. It did so because the amendment comported with the applicant's consistent intent and the original powers of the limited partnership were not so extraordinary as to suggest that the limited partnership agreement was a sham or that it deprived the general partners of their exclusive control over the applicant. Hence, the Commission concluded that there was no comparative upgrading and that the applicant was entitled to credit for all of its general partners' ownership interests. Discrepancies between the limited partnership agreement and the Commission's subsequently-adopted insulation standards did not matter, since the applicant had not tried to insulate the limited partnership interests from attribution. However, when the applicant wanted to be able to sell the existing limited partnership interests to new, fully insulated limited partners, the Commission authorized a further amendment so that the limited partnership agreement could comply with the insulation requirements in all respects. 4 FCC Rcd at 1784 ¶¶ 22-25. The additional amendment would not affect the integration of the general partners and, therefore, would not change the applicant's comparative position.

16. Here, in contrast, LI-COM was never entitled to any integration credit, as its integration proposal was defective under the *Anax* doctrine from the time of its execution. LI-COM derives no equity for acceptance of its tardy amendment to cure that defect (and thereby enhance its standing) merely because of the intervening adoption of more specific requirements. In short, good cause does not exist for accepting LI-COM's amendment, and equity does not require it.

Aztec Broadcasting Corp.

17. Aztec Broadcasting Corp. challenges the Board's decision to give Aztec only partial integration credit. *See R. B.*, 3 FCC Rcd at 6336 ¶ 31. Aztec alleges that the Board erred in reducing Aztec's integration credit by the amount of non-voting stock held by Enrique Inglesias, who is also a two percent voting stockholder, the corporate secretary, and one of the corporation's three directors, but who does not plan to participate in daily station management. Aztec contends that minority membership on the board should not be considered for integration purposes because Inglesias does not control the board. The other two directors can control without his assent, and they have the power to unseat him by exercising their prerogatives as voting shareholders.

18. Aztec is mistaken in contending that Iglesias' position as a corporate director and officer is immaterial. Aztec's by-laws and articles of incorporation empower its board to manage its business and affairs. Salvatierra Ex. 4 at 3, Ex. 5 at 5; Tr. at 885-95. The board's decisions are determined by majority vote, with each director having an equal vote. Tr. at 827. Thus, Iglesias shares *de jure* control with his two fellow directors. Although the others can combine to outvote him, he can cast his vote with either of them to outvote the third. Each has partial control, in equal measure. This role is inconsistent with the purely passive role that *Anax* requires to insulate an interest from comparative consideration. *See Coast TV*, supra. 5 FCC Rcd at 2752-53 ¶¶ 15-16.[9]

TV Broadcasters, Inc.

19. TV Broadcasters, Inc. (TVB) contends that the Board erred in refusing to give integration credit for the proposed involvement of two of TVB's stockholders and directors, who each owned 25 percent of TVB's stock. Esther Angulo, one of the stockholders, would serve as office manager and director of human resources and equal opportunity compliance. Jacqueline Zillioux, the other stockholder, has no title but would advise on programming and assist in recruiting and screening minority employees. The Board found that Angulo's role blurs the line between management and non-management functions, and that Zillioux' functions are merely advisory and consultative. It correctly concluded that neither stockholder had enough management responsibility to qualify for integration credit. *See R. B.*, 3 FCC Rcd at 6334-35 ¶¶ 24, 25.

20. The Board did not err in denying integration credit for Angulo. TVB had the burden of showing "the extent [of Angulo's] policy functions and the likelihood of [her] playing important roles in management." *Comparative Policy Statement*, 1 FCC 2d 393, 395 (1965), a burden it did not meet. Angulo will work "in the capacity of office manager and director of human resources and equal opportunity compliance." *I. D.*, 2 FCC Rcd at 6943, ¶ 103. Following precedent, the Board denied credit for Angulo's proposed participation in the capacity of office manager. 3 FCC Rcd at 6334-35 ¶ 24. TVB argues that the Board ignored substantial, uncontroverted evidence of the management nature of Angulo's role, but it points only to its Ex. 2, which vaguely states that she "will be responsible for supervising the administrative operation of the station and establishing and implementing station personnel policies and rules." This was noted by the Board. *See id.* TVB has not pointed to anything in the record that describes or clarifies Angulo's expected office manager and "administrative" duties to rebut the presumption that the function of an office manager is largely clerical. *See Vacationland Broadcasting Co., Inc.*, 97 FCC 2d 485, 493-94 (1984). Although Angulo will also serve as director of human resources and equal opportunity compliance, a role that might include the kind of policy/management responsibility required by the *Comparative Policy Statement*, TVB has not shown that her functions in this capacity would be significant rather than merely incidental to her non-management responsibilities. *See Apogee, Inc.*, 99 FCC 2d 979, 987 (Rev. Bd. 1985), modified on other grounds, FCC 86-3, January 8, 1986. Thus, the Board correctly concluded that the blurring of management and non-management functions in this case precluded awarding integration credit for Angulo.

21. The cases that TVB cites as contrary authority do not support its argument. In each of those cases, in contrast to the situation here, the applicant claiming credit showed that the principal in question would hold a position of a sort that the Commission had identified as of key importance in its *Policy Statement*, *supra*, 1 FCC 2d at 395, or would be entrusted with significant discretion. In *Tulsa Broadcasting Group*, 2 FCC Rcd 6124, 6128 (Rev. Bd. 1987), the "Operations Manager" would have authority to hire and fire employees and would share principal responsibility for producing public affairs programming, among other things. In *Vela Broadcasting Co.*, 2 FCC Rcd 3663, 3667 (Rev. Bd. 1987), the principal was to be the news director. In *Voce Intersectario Verdad America, Inc.*, 100 FCC 2d 1607, 1616-17 (Rev. Bd. 1985), the principal was to be the general sales manager. In *Merrimack Valley Broadcasting, Inc.*, 97 FCC 2d 506 (Rev. Bd. 1982) (subsequent history omitted), the principals would share responsibility for producing local public affairs programs and public service announcements.

22. The Board did not err in denying integration credit for Zillioux either. TVB argues that the Board ignored substantial record evidence and precedent, but, again, TVB did not meet its burden of proof. The affidavit of Duran-Martinez, the TVB stockholder and proposed general manager to whom Zillioux would report, shows that Zillioux would have no title and would "advise the station on programming . . . and assist in the recruitment and screening of minority employees." TVB Ex. 2. TVB alleges that the testimony of Angulo on cross examination elaborated on Zillioux' role, but Angulo testified only that the stockholders would be "the department heads" and that "consultants" hired to perform key functions at the station would be subordinate to the stockholders. Tr. at 2326. No specific role is described for Zillioux other than the advisory and assistant role mentioned in TVB Ex. 2 and the Board's decision, 3 FCC Rcd at 6335 ¶ 25.[7] An advisor or assistant to someone who performs a management function is not herself a manager for integration purposes. *See Comparative Policy Statement*, 1 FCC 2d at 395, which provides that "[m]erely consultative positions will be given no weight" in the comparative analysis.

23. TVB points to *New Continental Broadcasting Co.*, 88 FCC 2d 831, 839 n. 11 (Rev. Bd. 1981), to support its assertion that advising the station on programming is a managerial role. However, *New Continental* is distinguishable. In *New Continental*, the applicant submitted a detailed description of its planned "Program Board," which consisted of all of the active stockholders and was chaired by the proposed general manager. This Program Board was to meet each week to review all aspects of the station's programming and to advise the general manager. The Review Board called this "managerial activity," *id.* at 839 ¶ 16, and distinguished this activity from such activities as "researching, formulating, and broadcasting various programs," which the Review Board found were not managerial. *Id.* In contrast, TVB has merely asserted that Zillioux will "advise the station on programming." It has not described what specific duties that role entails, and it has given no indication that Zillioux' advisory function would be comparable to the broad, formal, high-level, and routinely exercised responsibility of the Program Board described in *New Continental*. Even if Zillioux would have some management role in programming, TVB has not shown that this involvement would be significant. Occasional managerial activities do not warrant integration credit. *Id.*

Tolleson Broadcasting Corp.

24. Tolleson Broadcasting Corp. argues that the Board erred in denying integration credit to one of Tolleson's stockholders, Nina Ortega. We decline to review that ruling because it does not affect the outcome. The Board held that even a fully integrated Tolleson would fall short of HGS in the final analysis, because HGS has a decisive qualitative edge. 3 FCC Rcd at 6334 ¶ 22. Tolleson does not contend that it would prevail over HGS if HGS retains intact the comparative credit that the Board awarded it. As explained below, we see no reason to disturb the Board's assessment of the amount of credit due to HGS.

Hector Garcia Salvatierra, Limited Partnership (HGS)
HGS: Integration

25. Tolleson, Aztec, and Doylan Forney have challenged the integration proposal of HGS, the only applicant that received full integration credit from the Board. The parties contend that Hector Salvatierra, the sole general partner, made no significant investment in the firm, whereas the HGS limited partners pledged to contribute large sums of cash to cover the costs of prosecuting the application, construction, and initial operation. This, they contend, makes HGS' integration proposal suspect.

26. We agree with the Board that the proposal's legitimacy is buttressed by the fact that Salvatierra was the moving force behind the HGS application:[8] for example, he located the limited partners and obtained their financial commitments, he selected and hired legal and engineering counsel, he chose the partnership form and negotiated the partnership agreement, and he supervised the preparation and completion of the application. *See R. B.*, 3 FCC Rcd at 6337 ¶ 35. Thus the amount of the general partner's investment relative to that of the limited partners is not, by itself, of decisional significance. *See R. B.*, 3 FCC Rcd at 6337 ¶¶ 36, 37; see also *KIST Corp.*, 102 FCC 2d 288, 292 ¶ 8 (1985), aff'd sub nom. *United States Telecasters v. U. S.*, 801 F.2d 1436 (D.C. Cir. 1986); *San Joaquin Television Improvement Corp.*, 96 FCC 2d 594, 598-99 ¶ 6 (Rev. Bd. 1983). When *de jure* control is vested in a general partner by a written agreement, allegations that the partnership's integration proposal is invalid carry no weight if not backed by evidence that the partners have acted inconsistently with the agreement or the totality of the circumstances do not otherwise undermine the credibility of the application. *See R. B.*, 3 FCC Rcd at 6337 ¶ 38. Cf. *Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984) ("We decline to order the Commission to disregard an applicant's corporate structure on the basis of a mere suspicion . . . ."). Tolleson, Aztec, and Forney have speculated about the HGS partners' motives but have not pointed to any evidence showing that Salvatierra or the HGS limited partners have acted inconsistently with the partnership agreement nor do the totality of the circumstances undermine the credibility of the arrangement.[9]

27. Nevertheless, Tolleson contends that the Board's decision is inconsistent with Commission and court decisions. However, none of the cited opinions holds that control of an applicant is simply to be ascribed under all circumstances to those who supply the financing. In *KIST*, *supra*, the Commission refused to credit an integration proposal, but it took care to explain that it did not infer that the proposal was unreliable merely because the nominal principal had made no financial commitment. 102 FCC 2d at 292, 293 n. 11. There is no mention of any question about control of the applicant in the cited opinion in *Heitmeyer v. FCC*, 95 F.2d 91 (D.C. Cir. 1937). In *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), the court predicated the pertinent holding on extensive evidence of *de facto* control by someone other than the putative controlling principal. In *WLOX Broadcasting Co. v. FCC*, 260 F.2d 712 (D.C. Cir. 1958), the court decided that a lender was a principal for purposes of integration analysis because the terms of the credit arrangement empowered him to manage the applicant's business and virtually ensured that he would acquire a majority of the shares of voting stock within two years. In *Cleveland Television Corp.*, *supra*, the court noted the absence of circumstances like those in *WLOX* and refused to infer that nonvoting shareholders' substantial financial commitments gave them a controlling interest in the station.[10]

HGS: Diversification

28. TVB and Doylan Forney challenge the Board's conclusion that Salvatierra's position as a director of the Broadcast Capital Fund (Broadcap) is not attributable to HGS for diversification purposes. *See R. B.*, 3 FCC Rcd at 6337 ¶¶ 39-41. Broadcap is a not-for-profit venture capital organization which provides financing and training to minorities seeking to acquire broadcast stations. It holds warrants to purchase non-controlling interests in some of the stations it finances. *See R. B.*, 3 FCC Rcd at 6337 ¶ 39. Forney asserts that Salvatierra should be awarded a substantial diversification demerit, but it offers no reasons for this view. TVB argues that the Board overextended Commission precedent for limited partnership interests and that the rationale for insulating convertible interests for purposes of the multiple ownership rules does not apply here. In its view, Broadcap is more than a passive investor in the stations that it assists, so the stations in which Broadcap holds warrants should be attributed to HGS.

29. We affirm the Board's conclusion that Salvatierra's connection with existing licensees through his position as a Broadcap director is "too remote and attenuated" to warrant a diversification demerit. The conclusion is justified, we believe, in light of the findings that Broadcap is not likely to exercise the warrants it holds, that Salvatierra has no financial interest in Broadcap, and that even if Broadcap did convert the warrants it would not have a controlling interest in any licensee. Although TVB has alleged that Broadcap is more than a passive investor, it has pointed only to Broadcap's evaluation of proposed investments, which includes site visits, market studies, and other information such as proposed program format to help it assess the possible success of the venture. *See* Tr. 649-50, 698-99. We would be concerned if Broadcap sent management teams to run the stations it finances, but we do not believe that Broadcap's prudence in assessing proposed investments or its offering of training gives HGS a cognizable interest in the stations that Broadcap finances.

30. In affirming the Board, we are not relying on its finding that the treatment of convertible interests in *Attribution*, 97 FCC 2d at 1021-22, is relevant for diversification analysis in comparative cases. *See* 3 FCC Rcd at 6337 ¶ 40. The multiple ownership rules addressed in *Attribution* deal with concentrations of ownership and control of the media of mass communications. Unexercised convertible interests do not affect control of a company and can only be exercised consistently with the multiple ownership rules. 97 FCC 2d at 1021. On the other hand, the diversification factor in comparative cases is intended to further "a maximum diffusion of control of the media of mass communications." *Policy Statement*, 1 FCC 2d at 394. The possession of multiple media interests is normally relevant to the objective of maximum diffusion, although it may not infringe the multiple ownership rules. Thus, if an applicant in a comparative case has convertible securities entitling him to acquire capital stock in a licensee of one or more existing stations serving distant markets,[11] the likelihood that the applicant will convert those interests into stock in other stations would be relevant to diversification, even if the applicant could

exercise his conversion rights without violating the multiple ownership rules. *See Signal Ministeries, Inc.*, 104 FCC 2d 1481, 1491 (Rev. Bd. 1986).

HGS: Financial Qualifications

31. TVB asks for the addition of a financial issue against HGS in light of the death of the controlling stockholder of one of HGS' two limited partners. TVB waited until after the Board had issued its decision to raise the issue, although HGS had reported the death four months before the Board's decision, and it offered only speculation that this death will affect the limited partner's financial commitment to the applicant; it cannot be inferred that the corporate limited partner itself is defunct merely because of the demise of one of its stockholders. This request is out of place in an application for review, for it goes to a question not raised before the Board. *See* 47 C.F.R. §§ 1.115(b)(5) and 1.115(c). The request is also deficient if considered as a late- filed motion to enlarge hearing issues. There is no showing of good cause for the late filing, and the request does not present a "question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of" TVB's tardiness. 47 C.F.R. §§ 1.229(c).

32. In sum, HGS, which has no diversification demerit, prevails by virtue of its 100 percent integration credit over all of its remaining adversaries, except, arguably, Tolleson Broadcasting Corp. (TBC). HGS prevails over TBC, as well, even assuming that the latter deserves full integration credit, in light of the uncontested finding that HGS is clearly to be preferred over TBC on account of "qualitative" integration credit.

33. ACCORDINGLY, IT IS ORDERED that the applications for review of the final decision of the Review Board in this proceeding filed by Alden Television, Inc., Aztec Broadcasting Corporation, Doylan Forney, Estrella Communications Limited Partnership, Maricopa Media, Inc., LI-COM Limited Partnership, Tolleson Broadcasting Corporation, and TV Broadcasters, Inc., ARE DENIED.

34. IT IS FURTHER ORDERED that the motion of LI-COM Limited Partnership for leave to amend its application, filed April 17, 1989, IS DENIED.

35. IT IS FURTHER ORDERED that the motions of Tolleson Broadcasting Corporation for leave to file consolidated opposition, for leave to file corrected pleadings, and for leave to file a motion to strike; the motion of Estrella Communications Limited Partnership for leave to file errata; and the petition of Doylan Forney for leave to resubmit its application for review ARE GRANTED.

36. IT IS FURTHER ORDERED that the consolidated motion of Tolleson Broadcasting Corporation to strike or disregard new matter IS GRANTED IN PART.[12]

37. IT IS FURTHER ORDERED that the decision of the Review Board to grant the application for construction permit of Hector Garcia Salvatierra, Limited Partnership and deny the other captioned applications IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Tolleson-Gomez Communications, Inc., did not file an application for review with the Commission. The Board's decision denying the Tolleson-Gomez applicaton is final.

[2] Applications for review were filed by Estrella Communications and Tolleson Broadcasting Corporation on December 2, 1988, and by Alden Television, Inc., Aztec Broadcasting Corporation, TV Broadcasters, Inc., Maricopa Media, Inc., and LI-COM Limited Partnership on December 5, 1988. Doylan Forney filed a corrected application for review with a motion for leave to resubmit on December 20, 1988. Hector Garcia Salvatierra, Aztec Broadcasting Corporation, LI-COM Limited Partnership, and Estrella Communications Limited Partnership filed oppositions to the applications for review on December 20, 1988. Tolleson Broadcasting Corporation filed a corrected opposition on December 22, 1988. Estrella Communications and Doylan Forney filed motions for Leave to file errata on December 5 and December 20, 1988, respectively. Tolleson Broadcasting Corporation filed a motion for leave to file consolidated opposition on December 22, 1988 and a consolidated motion to strike or disregard new matter on December 29, 1988 with an associated motion for leave to file. Aztec Broadcasting Corporation filed an opposition to Tolleson Broadcasting Corporation's motion to strike on January 10, 1989 and errata on January 11, 1989. LI-COM Limited Partnership filed a petition for leave to amend on April 17, 1989. Estrella Communications, Aztec Broadcasting Corporation, and Hector Garcia Salvatierra filed oppositions to LI-COM's petition on April 26, 1989.

[3] The Commission reviewed and revised standards for attributing interests in media properties for purposes of the Commission's multiple ownership rules and for reporting those interests to the Commission in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984) (*Attribution*). It granted reconsideration in part in *Atribution Reconsideration Order*, 58 RR 2d 604 (1985) (*Attribution Reconsideration*), and it granted further reconsideration and clarification in *Clarification of Ownership Attribution*, 1 FCC Rcd 802 (1986) (*Clarification*).

[4] The Commission recently released a Notice of Proposed Rule Making regarding reforms to expedite the hearing process. One of the reform proposals is elimination of the *Anax* policy. Pursuant to that proposal, all ownership interests would be considered in the comparative analysis, whether or not they are passive. *Proposals to Reform the Commission's Comparative Hearing Process*, FCC 90-194, rel. 6-26-90. The pendency of that proposal has no bearing on this case. By the same token, our disposition of this case is without prejudice to our consideration of that proposal.

[5] The elements of good cause to be shown are:

> that [the petitioner] acted with due diligence; that the proposed amendment was not required by [his] voluntary act; that no modification or addition of issues or parties would be necessitated; that the proposed amendment would not disrupt the orderly conduct of the hearing or necessitate additional hearings; that the other parties would not be unfairly prejudiced; and that the applicant would not gain a competitive advantage.

O' Connor, supra, 22 FCC 2d at 143.

[6] Because we affirm the Board decision on the basis of Inglesias' position as an Aztec director, we do not have to address the Board's finding that Inglesias was Aztec's "prime mover" or consider whether Aztec sought to gain enhancement credit by artificial means.

[7] TVB's failure to make a prima facie case that Zillioux will occupy a management role at the station distinguishes this case from *Coast TV*, 2 FCC Rcd 2982 (Rev. Bd. 1987), review granted in part on other grounds, 4 FCC Rcd 1786 (1989), modified, 5 FCC Rcd 2751 (1990), which TVB says gives its competitors the rebuttal burden. In *Coast TV*, the Board accepted testimony that an owner would serve as full time Director of Minority Affairs as prima facie evidence of significant involvement because a position of that description had been recognized as managerial in a prior decision. Here, TVB has shown only that Zillioux will "assist" in minority recruitment. Competing applicants have no obligation to develop more specific information about Zillioux' responsibilities--or lack of responsibilities--at the station.

[8] Although this showing is not necessarily a prerequisite, Salvatierra's substantial early efforts to assemble HGS provides added support for the credibility of this proposal.

[9] The circumstances of this case contrast with those present in *Metroplex Communications, Inc.*, 4 FCC Rcd 8149 (Rev. Bd. 1989), *rev. denied*, FCC 90-294, adopted Aug. 24, 1990. In that case, unlike the present one, the circumstances surrounding the applicant's proposal indicated that the general partner could not be relied on to exercise sole control over the partnership, as her position indicated she would. Specifically, the partnership's attorneys, who largely organized the applicant, recruited as general partner a virtual stranger who only met briefly with two of the limited partners on one occasion before the hearing, who would make no investment in the applicant and who had no broadcast experience. Moreover, following the organization of the applicant, the record showed a pattern of conduct consistent with the lack of sole control by the general partner.

[10] Tolleson is also unpersuasive in arguing that the Commission should apply the standard for determining alien ownership interests in *Declaratory Ruling Concerning Citizenship Requirements*, 103 FCC 2d 511 (1985), modified, 1 FCC Rcd 12 (1986), to the integration analysis in comparative proceedings. In *Declaratory Ruling*, the Commission looked to the capital contributions of limited partners to determine the extent of equity ownership subject to 47 U.S.C. § 310(b)(3) or (4), which sets limits on the proportion of alien *ownership*, without regard to control. 103 FCC 2d at 516-18 (1985). Integration analysis, on the other hand, is to determine the extent to which those with control over the applicant's business affairs would participate in day-to-day station management.

[11] Broadcap has no warrants in any station in the Tolleson area, so we need not consider the appropriate treatment of a convertible interest in a station in the applicant's market.

[12] Footnotes 6 and 7 on page 9 of HGS' Opposition to Application for Review of Tolleson Broadcasting Corporation, filed Dec. 20, 1988, improperly raise new matter that shall be stricken.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS CO. LIMITED PARTNERSHIP — File No. I-T-C-90-121

Application for authority to lease and operate facilities for direct service between the U.S. and the Philippines.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: August 24, 1990; Released: September 5, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on June 1, 1990 by US Sprint Communications Co., Limited Partnership (US Sprint), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite facilities for direct service between the U.S. and the Philippines. The application was placed on public notice on June 13, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to the Philippines by US Sprint.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-121 IS GRANTED, and US Sprint is authorized to:

a. lease from Comsat and operate 20 voice-grade satellite half-circuits between the San Ramon earth station in California and an appropriate satellite over the Pacific Ocean Region connecting with similar circuits between the satellite and an earth station in the Philippines, furnished by US Sprint's correspondent Philippine Global Communications, Inc. (Philcom); and

b. use said facilities to provide US Sprint's regularly authorized services, including switched voice service, between the U.S. and the Philippines and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between US Sprint and its correspondent in the Philippines, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 12

Transmittal No. 2416

ORDER

Adopted: August 27, 1990; Released: August 28, 1990

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) has filed Transmittal No. 2416 to introduce Virtual Telecommunications Network Service (VTNS) Option 55 by which AT&T will provide voice and data communications service among locations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for this option are stabilized throughout a three-year term. *See* AT&T Transmittal 2416, Description and Justification (D&J) at 1-4. The basic charge for VTNS Option 55 is $525,140 per month. *Id.* at 5. Transmittal 2416 is scheduled to become effective August 26, 1990.

2. US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate Transmittal 2416 on July 27, 1990. AT&T filed a reply on August 6, 1990.

3. Sprint argues that AT&T has failed to demonstrate that Option 55 is an integrated service package that is "unlike" AT&T's other component services. Sprint Petition at 1-2. Moreover, Sprint contends that AT&T's provision of 55 individual VTNS offerings makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittals also effectively restrict the offering to one customer. Sprint further argues that the individualized pricing of VTNS options is comparable to the local exchange carriers' individual case basis (ICB) rates for DS3 service, that AT&T now has sufficient experience to end its individualized pricing and develop general rates, and that the Commission thus should order AT&T to offer these rates under a generally available tariff, as it did in the ICB DS3 case. *Id.* at 2-4. Additionally, Sprint alleges that AT&T's projected 1990 revenue from all Tariff 12 VTNS options now exceeds $1 billion and likely accounts for more than 2 percent of the entire interexchange market. *Id.* at 4. Sprint also alleges that AT&T's cost support for Option 55 is "seriously deficient" and incorporates by reference the arguments against VTNS Options 17, 18, and 19 (AT&T Transmittals 1810, 1826, and 1832, respectively). *Id.* at 4 & 5 n.4.[1]

4. AT&T contends that the rates in Option 55 are not unjustly discriminatory because the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. AT&T Reply at 2-3. AT&T also states that the Commission has consistently found AT&T's standard, Commission-sanctioned cost systems sufficient to support AT&T's Tariff 12 filings. AT&T contends that these methods satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 5-7 & 6 n.* * *.

5. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2416, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that this tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition to reject, or to suspend and investigate, American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2416, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Sprint maintains that the arguments raised against those transmittals continue to be valid because the Bureau has not addressed these arguments on the merits in any previous Order. Sprint Petition at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-581

In re Applications of

COMPASS ROSE COMMUNICATIONS CORP.	File No. BPCT-880610KG
MARICOPA COMMUNITY TELEVISION PROJECT	File No. BPCT-880802KF
Gregory R. Brooks d/b/a BROOKS BROADCASTING	File No. BPCT-880802KI

For Construction Permit
Phoenix, Arizona

Appearances

David M. Silverman, Robert G. Scott, Jr., Yvonne R. Bennett on behalf of Compass Rose Communications Corp.; *DeWitt Conklin* on behalf of Maricopa Community Television Project; *Barry D. Wood, Ronald D. Maines* on behalf of Brooks Broadcasting.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD J. KUHLMANN

Issued: August 27, 1990; Released: September 7, 1990

1. The three applicants in the caption of the case and two others now dismissed were designated for a comparative hearing on November 30, 1988 to select a licensee to operate television Channel 61 at Phoenix, Arizona. *Hearing Designation Order*, 4 FCC Rcd 800 (1989). The following issues remain to be resolved in this decision:

> 1. To determine whether Maricopa Community Television Project has reasonable assurance of funds to construct and operate Channel 61 and, in light of that finding, whether it is financially qualified.
>
> 2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> 3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

2. A prehearing conference was held on April 4, 1989. Tr. 1-9. Oral hearing sessions to examine the written testimony were held on October 23, 1989, Tr. 10-174, March 13, 1990, Tr. 176-359, and March 14, 1990, Tr. 360-405. Proposed findings and conclusions of law were filed by the parties on April 26, 1990, and replies were filed on April 30, 1990.

FINDINGS OF FACT

Issue 1: Whether Maricopa Community Television Project has reasonable assurance of funds to construct and operate Channel 61.

3. Ellen Boyd, the President of MCTP, certified that MCTP is financially qualified. She relied on a July 27, 1988 letter from the Affiliated Media Foundation (AMFM) of New Orleans, Louisiana. Tr. 65. AMFM's letter stated that AMFM was willing to "secure funding" of $640,000 for MCTP to build and operate the station. MCTP Exh. 9, at Attach. A. Joann Bishop, Comptroller of AMFM, signed AMFM's letter to MCTP. Ms. Bishop testified that when she signed the letter she did not know where AMFM would obtain the money. Tr. 364-65.

4. AMFM did not intend to provide money to MCTP but it planned on finding a third party to lend MCTP money. Tr. 313; MCTP Exh. 9. AMFM obtained a letter from The Metro Times, Inc., a Detroit newspaper, in which the paper promised to provide loan guarantees to AMFM for MCTP's application. Tr. 326; MCTP Exh. 9. Laura Markham, who signed The Metro Times letter, refused to honor a subpoena for her appearance at the hearing. The Metro Times, Inc. has never lent money for any other AMFM project. Tr. 335-36.

5. Dale Rathke, Assistant Secretary of AMFM, testified that he was knowledgeable about the Commission's requirements for reasonable assurance. Tr. 390-92. No bank, financial institution, or other lending source has been found to lend AMFM or MCTP the money it needs to finance MCTP's proposal, even with the letter from The Metro Times. Tr. 391-92. AMFM does not have sufficient funds to finance the construction and operation of the Phoenix station for MCTP. AMFM has liquid assets of less than $5,000 and current liabilities of over $615,000. Brooks Exh. 7; Tr. 332, 352. When Ellen Boyd signed the certification, she did not rely on the assets of the applicant's principals, and she did not pursue any other means of financing the station. Tr. 64-65. She stated she was and is relying on AMFM for MCTP's financing. Tr. 61.

Issue 2: Comparison of the applicants

Full-time participation in station operation by owners

Compass Rose

6. David M. Drucker is president, director and sole shareholder of Compass Rose. Compass Rose Exh. 1, at 1. His spouse, Penny, is secretary, vice president and a director of Compass Rose. *Id.* Mr. Drucker proposes to work full time, 40 hours per week, as the general manager of station. Compass Rose Exh. 2, at 1. He has promised to oversee construction and operation and will be in charge of overall operations. *Id.* Mr. Drucker promises that he will hire key personnel, make "all decisions" concerning programming, and direct and oversee the business affairs of the station. *Id.*

7. Mr. Drucker lives in Colorado, but if a grant is made to Compass Rose, he will move to the Phoenix area and establish a residence within the Grade B coverage contour of Channel 61. Compass Rose Exh. 2, at 3. Mr. Drucker owns 80% of the common stock of High Seas Communications Corp., the general partner of The Denver Channel 59 Partnership, Ltd., licensee of television station KUBD-TV, Channel 59, Denver, Colorado. Compass Rose Exh. 4A, at 1. Charles Ergen, Drucker's long-time financial partner owns the remaining 20% of High Seas common stock and 80% of the equity in the licensee. Tr. 187, 188-89; Compass Rose Exh. 4A, at 1. Mr. Drucker had promised, before the partnership was formed for Channel 59, Denver, that he would manage the station, and he claims that he did manage the station from September 1986 to October 1988. Compass Rose Exh. 2, at 3. Mr. Drucker stated he began as general manager at about the time Channel 59 began broadcasting in September 1987. Tr. 190. Mr. Drucker believed that he continued at the station full time for a year or a year and a half. Tr. 193. Today, he spends 10 hours a week at the station. Tr. 195. In October 1988, Drucker stopped acting as general manager. Tr. 196. He currently performs occasional duties which have included setting up a microwave network. Compass Rose Exh. 2, at 2. Mr. Drucker never informed the Commission that he would not be the permanent general manager. He believed that his role was to get the station established, "to turn the bulb on." Tr. 201.

8. Before Channel 59 began operations, Mr. Drucker, on May 29, 1987, as the 20% owner, vice president, director of Echonet-Longmont Corp., promised to move to Longmont, Colorado and work full time at Longmont Channel 25 if Echonet received the grant. Compass Rose Exh. 4A, at 2. Tr. 201-03. As a result of a merger in that proceeding, Drucker's group ended up owning 50% of the permittee. Tr. 204; Compass Rose Exh. 4A, at 2. The settlement agreement provides that Echonet-Longmont or its principals will manage construction and operation of the station. Tr. 281. The station has not been put on the air and Mr. Drucker testified that he will not do so because his "direction has changed now. What I want to do with my life doesn't really fit into that anymore." Tr. 207. He has not, however, advised the Commission that he does not intend to work at the station. Tr. 207. Mr. Drucker's integration proposal for Phoenix is the same as that which he made for Longmont. Tr. 209. The only difference, Mr. Drucker explained, is that he controls the Phoenix applicant but does not control the Longmont applicant. *Id.* Mr. Drucker stated that he did not believe that the Longmont permit would be returned to the Commission. Tr. 212-13.

9. Mr. Drucker states that he will spend full time at the station and that he will end any other commitments. Compass Rose Exh. 2, at 1. He represented that he practiced law only occasionally, and that he had only one pending case. Compass Rose Exh. 2, at 2-3. Mr. Drucker represents other clients but he maintains that there are no legal matters that will be unresolved upon a grant. Compass Rose Exh. 2, at 3; Tr. 197; Mr. Drucker's spouse, Penny, holds a permit to construct television Channel 22 at Key West, Florida. Mr. Drucker has been involved in the planning for that channel. Tr. 225-26.

10. When Mr. Drucker applied for the Denver station, he owned 80% of the applicant. But in order to construct and settle with the other applicants, Charles Ergen met all the costs and Mr. Drucker's share was reduced to 25%. Tr. 260. Mr. Drucker stated that Mr. Ergen would not acquire an interest in the Phoenix applicant, and that he had never agreed to become a director. Tr. 259-60. In a June 26, 1989 declaration to the Commission, Mr. Drucker represented that Mr. Ergen had agreed to become a director. Tr. 261.

MCTP

11. MCTP is a non-profit, non-stock corporation. MCTP Exh. 1. The corporation has three directors, Ellen Boyd, George Perez and Nancy Hicks Marshall. *Id.* Each director has equal voting rights. *Id.* None of MCTP's directors propose to work as a manager of the station. The board of directors will supervise and oversee the station. MCTP Exh. 3, at 1. The board members "intend to devote as much time as will be necessary," but they will not "withdraw from his or her current employment." MCTP Exh. 3, at 2.

Brooks

12. Brooks is a sole proprietorship owned by Gregory Brooks. Brooks Exh. 1, at 1. Mr. Brooks proposes to work as the general manager of the station. Brooks Exh. 1, at 1. He will work full time, 40 hours per week. Brooks Exh. 1, at 1. He will supervise all aspects of construction, operation, administration, programming, business and technical areas. *Id.*, at 1. He has been a resident of the service area since 1946, except for five months between September 1965 and January 1966. Brooks Exh. 1, at 2. He will retain his residence within the proposed city grade signal in Maricopa County. *Id.*, at 2-3. Mr. Brooks has also participated in local community activities. He was a member of the Board of Directors of the New Magna Irrigation District from 1978 to 1981; he was Scouting Coordinator for the Boy Scouts of America from August 1981 through March 1984 and, from 1988 to the present, he was a scout advisor; he was a member of the board of the Florence Flood Control District from 1984 to 1987; he participates in the Young Women's program at his church; and beginning in March 1984 and for five years he has served as head of his church congregation. Brooks Exh. 1, at 3-4. He has also counseled married couples and unwed mothers since November 1988, and during the 1988-89 school years, he worked as a teacher's aide at an elementary school. *Id.*, at 6. He proposes to arrange his business and civic affairs to allow him to devote full time to the station. *Id.*, at 2.

Diversification of ownership of mass media

13. *Compass Rose* has no media interests but its sole owner, David M. Drucker, owns 80% of the common stock of High Seas Communications Corp. and High Seas is the general partner and 25% equity owner of The Denver Channel 59 Partnership, Ltd., licensee of UHF station KUBD-TV, Denver, Colorado. Compass Rose Exh. 4A. Denver has ten other television stations and numerous radio broadcast stations. Denver is 586 air miles from Phoenix. Mr. Drucker is vice president and owns 20% of the common stock of Echonet Corporation which owns 50% of Longmont Channel 25, Inc., which holds a construction permit for Channel 25, Longmont, Colorado. *Id.* Echonet Corporation is also the licensee of KDMD, UHF Channel 33 in Anchorage, Alaska, and is the permittee of UHF Channel 20 in Billings, Montana. *Id.* Anchorage has seven other television stations and Billings has five television stations. Both communities have 5 or

more radio broadcast stations. Echonet holds licenses for low power television stations in Fort Collins, Colorado, Austin, Texas, Cheyenne, Wyoming, and Anchorage, Alaska. Compass Rose Exh. 4A, at 3. It also holds permits for low power television stations in Albuquerque, New Mexico and Colorado Springs, Colorado. *Id.*

14. David Drucker's spouse, Penny Drucker, holds a construction permit for UHF Channel 22, Key West, Florida, a license for a low power television station in Santa Fe, New Mexico, and a construction permit for a low power television station in Aspen, Colorado. Compass Rose Exh. 4A, at 3-4. David Drucker owns 30% of Sandfiddler Spectrum Corporation which has a CP for a low power television station in Newport, Virginia. *Id.*, at 4. Penny Drucker owns 10% of Sandfiddler. David Drucker owns 5% of Echostar Satellite Corporation and he is vice president and a director. Echostar holds a conditional construction permit for a direct broadcast satellite system. *Id.* Echostar will provide 11 channels of television service to the entire country, including Arizona. *Id.*; Tr. 248-49, 252. Charles Ergen at the B cutoff date was a director of Compass Rose. He and his spouse, Contey Ergen, control 80% of the stock of Echonet. Compass Rose Exh. 4, at 2; Tr. 186.

15. *Maricopa* and its directors have no media interests. MCTP Exh. 2. *Brooks* holds no media interests. Brooks Exh. 1, at 7.

CONCLUSIONS

Maricopa Community Television Project does not have reasonable assurance for funds to construct and operate Channel 61.

16. Ellen Boyd, MCTP's president, certified that the applicant was financially qualified. She relied on a letter from MCTP's consultant AMFM that it would secure financing for MCTP. Ms. Boyd did not know whether AMFM could or had obtained financing. The AMFM letter was signed by Joann Bishop, its comptroller, who did not know where AMFM would obtain financing. Dale Rathke, who advised AMFM about what was needed to comply with the reasonable assurance standard, was aware of what the Commission required. AMFM obtained a promise from The Metro Times, Inc., a Detroit newspaper, to provide loan guarantees to AMFM for MCTP's application. But no source for a loan was found and a representative of The Metro Times refused to honor a subpoena requesting her appearance. AMFM does not have the $640,000 that MCTP estimates it needs, and MCTP did not attempt to determine whether its directors could provide the money needed. There is no evidence that anyone has agreed to give or lend MCTP money for its proposal. It is, therefore, concluded that MCTP is financially unqualified.

Comparison of the qualified applicants Brooks and Compass Rose [1]

17. Brooks and Compass Rose are each owned by individuals who have promised to work full time, 40 hours per week, as the general manager of the station. David Drucker is Compass Rose's only stockholder and Gregory Brooks is Brooks' sole proprietor. Seemingly, each applicant should be entitled to credit for promising complete or 100% integration of ownership into management.

18. Brooks argues that David Drucker's promise to manage the station in Phoenix is unreliable in light of his failure to keep previous promises to manage stations in Denver and Longmont, Colorado. When Mr. Drucker applied for Channel 59 in Denver as the 80% owner of High Seas Communications, he promised to work full time as the manager of the station. The proceeding was settled and High Seas became the managing partner of Denver Channel 59 Partnership, Ltd., the entity that received the permit. (Mr. Drucker controls Channel 59's general partner, but his equity in the licensee partnership has been substantially reduced.) Mr. Drucker managed the station for only a year or year and a half. Currently, he spends 10 hours a week on station business but someone else manages the day-to-day affairs of the station. Drucker testified that he viewed his role at the Denver station as one where he would "turn the bulb on." And he believes he fulfilled that role. He never reported to the Commission that under the new arrangement he did not plan to manage the station on a permanent basis.

19. The proposal for Longmont, Colorado Channel 25 began with Mr. Drucker as a part owner of the applicant Echonet-Longmont Corp. He promised the Commission that he would divest his interest in Denver Channel 59 and move to Longmont and establish and manage a station on Channel 25. The promise to divest Channel 59 and move to Longmont was made at the very time Channel 59 began operation. With the exception that he controls Compass Rose and does not control Echonet, Mr. Drucker views his promise to the Commission for the Phoenix facility to be the same as that made for Longmont. The Echonet proposal, like High Seas' proposal for Denver, resulted in a settlement and Mr. Drucker's Echonet group promised as part of the settlement agreement to put the facility on the air and manage the station. He now states that his plans have changed and he will move to Phoenix and abandon any commitment he had to the Longmont proposal.

20. Compass Rose urges that Mr. Drucker's repeated change of mind about managing broadcast facilities does not make him unreliable, as Brooks argues, because he had no legal obligation to the Commission to manage either the Denver or the Longmont facility. Compass Rose maintains that Mr. Drucker's promises were ended when grants were made under new ownership arrangements. *Citing, Ruarch Associates*, 103 FCC 2d 1178 (1986). Brooks believes that because Drucker never told the Commission that he would not manage, he still had an obligation to manage. The holding of *Ruarch Associates* is that promises made in the comparative context are absolved if the applicant is not selected through a comparison. Mr. Drucker had no legal obligation to work at either facility because both the award in Denver and in Longmont were made without comparing the applicants. The Commission did not rely on his promises in making a determination in either case. Brooks also urges that Mr. Drucker's law practice could take time away from his full-time commitment. Mr. Drucker has promised that his practice will not occupy his time. There is no evidence that he has an active law practice at this time.

21. Compass Rose urges that Gregory Brooks actually shares ownership of Brooks with his spouse. Compass Rose supports its assertion by pointing to the fact that Mr. Brooks paid bills for his application from a joint checking account that he shares with his spouse. Compass Rose also urges that on one occasion Mr. Brooks referred to the

applicant as we, while being deposed. It is Compass Rose's view that Mr. Brooks must have meant his spouse. Compass Rose's arguments have been considered before and rejected. *See Memorandum Opinion and Order*, FCC 90M-83, released January 12, 1990. Both Brooks and Compass Rose are entitled to credit for 100% integration.

22. While Compass Rose's Drucker will move to the service area, Brooks has lived in the service area since 1946 with only one short absence. He lives within the proposed city grade signal. In addition, Brooks has been active in local activities. Those factors outweigh Drucker's short time as a broadcaster and his promise to move to the service area of the station. Brooks is to be preferred under best practicable service.

23. Brooks is also to be preferred under diversification of the media. He has no broadcast interests and Drucker, his spouse Penny, and its former director, Charles Ergen, have controlling interests in numerous broadcast facilities.

24. Because Brooks is qualified and is comparatively better than Compass Rose on both qualitative integration and diversification, it is to be preferred overall.

ACCORDINGLY, IT IS ORDERED that the motion to strike, filed April 30, 1990 by Compass Rose Communications Corp., IS DENIED.

IT IS FURTHER ORDERED that the applications of Compass Rose Communications Corp. (File No. BPCT-880610KG) and Maricopa Community Television Project (File No. BPCT-880802KF), ARE DENIED; and the application of Gregory R. Brooks d/b/a Brooks Broadcasting (File No. BPCT-880802KI) for a construction permit for a new commercial television station to operate on Channel 61 at Phoenix, Arizona, IS GRANTED.[2]

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Kuhlmann
Administrative Law Judge

FOOTNOTES

[1] MCTP is not entitled to comparison, but if it were compared to the other applicants, it would not prevail over Brooks because it proposes no full-time or part-time integration of those directors who control the applicant.

[2] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision will become effective 50 days after its public release pursuant to Section 1.176(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE
Released: August 29, 1990

COMMENTS INVITED ON ALBANY AREA REGIONAL PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for the Albany Area (Region 30).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (*See* Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 30 consists of: St. Lawrence, Franklin, Clinton, Jefferson, Lewis, Essex, Oswego, Cayuga, Onondaga, Madison, Oneida, Herkimer, Montgomery, Fulton, Hamilton, Warren, Saratoga, Washington, Schenectady, Rensselaer, Columbia, Greene, Albany, Schoharie, Delaware, Otsego, Chenango, Broome, Cortland, Tompkins and Tioga Counties. (*See* General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to *General Docket No. 90 - 394, Albany Area - Region 30,* and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497 or Fred Thomas, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-125
Phase II

In the Matter of

Annual 1985 Access Tariff Filings

ORDER

Adopted: August 30, 1990; Released: August 31, 1990

By the Chief, Common Carrier Bureau:

1. On August 1, 1990, BellSouth Corporation (BellSouth) filed a motion for extension of time to effectuate refunds in the above-captioned proceeding. BellSouth requests that the Commission defer effectuation of the Minimum Monthly Usage Charges (MMUCs) refund until the merits of its pending appeal have been adjudicated by the United States Court of Appeals or the United States Supreme Court.[1]

2. On July 2, 1985, local exchange carriers (LECs) filed revised annual interstate access tariffs as directed by Part 69 of the Commission's Rules. *See* 47 C.F.R. Part 69. These revisions changed virtually all their rates, terms, and conditions for both special and switched access. The Bureau initiated an investigation of these tariff revisions in an Order released September 30, 1985.[2] Although the bulk of the proposed rate revisions became effective October 1, 1985, the Bureau, *inter alia*, suspended the LECs' proposed MMUCs for the five-month statutory period pending investigation. On June 6, 1986, the Bureau released an Order designating issues and requesting further justification or information with respect to particular switched access tariff terms and conditions, including MMUCs. [3]

3. In 1987, the Commission evaluated the reasonableness of the LECs' MMUCs and concluded that the MMUCs should be applied based upon the threshold number of minutes contained in the tariffs effective as of July 2, 1985.[4] Citing the carrier's failure to file adequate cost support, the Commission also determined that MMUCs should apply only to local transport charges and should be calculated based only on the cost of dedicated transport.[5] Finally, the Commission ordered the LECs to refund by July 7, 1987, all MMUC overcharges that resulted from any improper application of MMUCs.[6] The Bureau subsequently extended the deadline for filing MMUC refunds until the Commission had acted on requests for reconsideration of the MMUC refund requirement.[7]

4. On April 27, 1989, the Commission released its *Reconsideration Order* in this proceeding which confirmed the LECs' MMUC refund requirement. On June 13, 1989, BellSouth filed with the United States Court of Appeals for the District of Columbia Circuit a petition for review of the *Reconsideration Order*. BellSouth then requested on June 15, 1989, that the Commission stay the effective date for making refunds of $5.1 million in MMUCs until the D.C. Circuit ruled on its petition for review. On September 12, 1989, the Common Carrier Bureau released an Order delaying the effective date of the MMUC refund while BellSouth's petition was pending with the Court. We granted BellSouth an extension until September 1, 1990, provided that BellSouth deposit $5.1 million in an interest-bearing escrow account.[8]

5. In the instant petition, BellSouth states that, on February 22, 1990, the Court approved a schedule which requires the submission of final briefs by the parties on September 7, 1990, and oral argument on October 9, 1990. BellSouth Motion at 2. BellSouth also asserts that, given the Court's schedule, certain merits of its appeal will not be adjudicated before the established deadline of September 1, 1990, for MMUC refunds. *Id.* at 2.

6. The Common Carrier Bureau has reviewed BellSouth's motion and concluded that the public interest would be served by a further extension of the effective date of the MMUC refund requirement while BellSouth's petition is pending before the D.C. Circuit. Grant of this extension is contingent upon BellSouth's continuous maintenance of the $5.1 million, plus accrued interest, in an interest-bearing escrow account. We note here, as we did in our *Extension Order*, that our decision to grant BellSouth an extension of time in no way affects any of the conclusions the Commission reached in the *Terms and Conditions Order*. In granting this further extension the Bureau is merely exercising the equitable discretion given the Commission in Section 4(j) of the Communications Act, 47 U.S.C. § 154(j).

7. Accordingly, IT IS ORDERED that the motion for extension of time filed by the BellSouth Corporation with regard to the above-captioned proceeding IS GRANTED until such time as the merits of its appeal have been adjudicated by the United States Court of Appeals for the District of Columbia. At such time, BellSouth must commence payment of the $5.1 million plus accrued interest.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* BellSouth Corporation v. FCC, Case No. 89-1380 (D.C. Cir., filed June 13, 1989).

[2] Annual 1985 Access Tariff Filings, Mimeo No. 7401, released Sept. 30, 1985 (Com.Car.Bur.) (*Terms and Conditions Order*).

[3] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, Order Designating Issues for Investigation, Mimeo No. 4963, released June 6, 1986 (Com.Car.Bur.).

[4] *Terms and Conditions Order*, 2 FCC Rcd at 1421.

[5] *Id.*

[6] *Id.*

[7] *See* Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 1973 (Com.Car.Bur. 1988) (June 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 4063 (Com.Car.Bur. 1988)

(September 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 5845 (Com.Car.Bur. 1988) (December 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 4 FCC Rcd 394 (Com.Car.Bur. 1988) (March 31, 1989, deadline).

[8] Annual 1985 Access Tariff Filings, released Sept. 12, 1989 (Com.Car.Bur.) (*Extension Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-364

In re Applications of

MBC Limited Partnership (hereafter MBC) — File No.BPH-890503MD

Deroblo Communications Inc. (hereafter Deroblo) — File No.BPH-890503MJ

Rey-Cel Broadcasting Limited Partnership (hereafter Rey-Cel) — File No.BPH-890503MM

For Construction Permit for a New FM Station on Channel 288A in Hali' Imaile, Hawaii

ERRATUM

Released: September 6, 1990

By the Chief, Audio Services Division:

Opinion paragraph 8 and resultant issue 1 erroneously designated an air hazard issue against applicant Deroblo in the Hearing Designation Order in MM Docket No. 90-364, DA 90-1053 (released August 22, 1990) for Channel 288A in Hali' Imaile, Hawaii. Additionally, paragraph 15 of the Order made the Federal Aviation Administration a party to the proceeding for purposes of the air hazard issue. The Order is hereby modified to delete paragraphs 8 and 15, as well as issue 1. Issues previously numbered 2 through 5 are hereby re-numbered 1 through 4, respectively.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-376

In re Applications of

GAYLA JOY HENDREN (hereafter "Hendren") — File No. BPH-880701MT

KERM, INC. (hereafter "KERM") — File No. BPH-880712MJ

JEM BROADCASTING COMPANY, Inc. (hereafter "JEM") — File No. BPH-880714NT (Dismissed Herein)

For Construction Permit for a
New FM Station in Bella Vista, Arkansas
Channel 293C2 (106.5 MHz)

HEARING DESIGNATION ORDER

Adopted: August 9, 1990; Released: September 6, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *KERM*. Examination of KERM's application reveals that its transmitting antenna site was short-spaced to the counterproposal in MM Docket 87-73 to upgrade FM Station KWKK (Dardenelle, Arkansas) from Channel 272A to Channel 294C1. This counterproposal was denied. *Report and Order* in MM Docket 87-73, 3 FCC Rcd 4840, 4844 (1988). However, a petition for reconsideration of this action was filed on September 2, 1988, and remains pending to date. Accordingly, KERM will be allowed to proceed to comparative hearing, but, in the event of grant of its application, such grant will be made contingent on the final action taken on KWKK's petition.

3. *Other Matter*. JEM's proposal indicates in Section V-B, Item 2, that the geographic coordinates for its transmitter site are NL-36 degrees *13* minutes 10 seconds WL-94 degrees 25 minutes 00 seconds. However, our study of JEM's site map (Figure 2) reveals that the correct latitude is 36 degrees *15* minutes 10 seconds. Since there are no other references within the application to JEM's listed coordinates, it is therefore impossible to determine from the face of the application whether the proposal is in compliance with the Commission's rules.

4. In the *Report and Order* in Docket 84-750, 50 Fed. Reg. 19936 (May 13, 1985), the Commission adopted an FM application processing standard which requires a "hard look" approach as to certain critical elements that are essential to a determination that an application is "substantially complete". This approach benefits the public interest by reducing frivolous and speculative applications and streamlining our processing procedures to make more efficient use of our staff and other resources. *See, e.g., Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 (1986).

5. Further, in Appendix D to the *Report and Order, supra*, we stated that absence of the geographic coordinates, to the nearest second, would prevent a determination of acceptability and thus would render the application not substantially complete. Thus, in the present case, these inconsistent data make it impossible to determine the veracity of the site availability certification, the environmental impact statement, or the information supplied for FAA approval. Accordingly, the JEM application was inadvertently accepted for filing and will be dismissed. *See, e.g., Steven B. Courts*, 4 FCC Rcd 4764 (1989).

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That, in accordance with paragraph 2 hereinabove, any construction permit awarded to KERM as a result of this proceeding shall be contingent on the final disposition of the petition for reconsideration filed in MM Docket 87-73.

9. IT IS FURTHER ORDERED, That, for the reasons stated in paragraphs 3, 4, and 5 hereinabove, the application filed by JEM IS DISMISSED as inadvertently accepted for filing.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance

stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-380

In re Applications of

RIO GRANDE BROADCASTING CO. (hereafter "RGB")	File No. BPH-880815MV
IGLESIA BAUTISTA CASTILLO FUERTE (hereafter "Fuerte")	File No. BPH-880815MX
ROBERTO PASSALACQUA (hereafter "Passalacqua")	File No. BPH-880816NN
RIO GRANDE BROADCASTING CORPORATION, INC. (hereafter "RGBI")	File No. BPH-880816OL
IRENE RODRIGUEZ DIAZ DE MCCOMAS (hereafter "McComas")	File No. BPH-880816OR
UNITED BROADCASTERS COMPANY (hereafter "United")	File No. BPH-880816OW

For Construction Permit for a
New FM Station on Channel 247A (97.3 MHz)
in Rio Grande, Puerto Rico[1]

HEARING DESIGNATION ORDER

Adopted: August 9, 1990; Released: September 6, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[2]

2. *RGB*. Applicants for broadcast authorizations are required by Section III of Form 301 to certify that sufficient net liquid assets are on hand or that sufficient funds are available from committed resources to construct and operate requested facilities for three months without revenue. RGB's response was "no." It did, however, indicate that it "believes it is financially qualified and is in the processing of assembling documentation in support of its financial qualifications." RGB's response does not provide a basis to determine that it is financially qualified to be a broadcast licensee. Accordingly, an appropriate issue will be specified below.

3. *United*. United proposes to construct a tower near the towers used or proposed by WGSX(FM), WVJP-FM, WVOZ-FM, WSJN-TV, WIDP(TV), WDZE(TV), and WVSN(TV). Our engineering study indicates that the combined operation of the existing stations and each of the proposals may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that United may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since United's proposal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the cumulative effect of all existing and proposed facilities in the surrounding area. Accordingly, United will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of United's Environmental Assessment, that United's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the Presiding Judge shall thereafter not consider the environmental effects of the proposal. *See* Section 1.1308(d) of the Commission's Rules.

4. *McComas*. On May 30, 1990, McComas filed an amendment to change her proposed tower site because the Federal Aviation Administration (FAA) advised her that her original site would have an adverse effect on its aeronautical operation because of the proposed height of her antenna. The amendment was filed after the last date for filing minor amendments as of right. The subject amendment was accompanied by the requisite good cause showing under 47 C.F.R. § 73.3522(a)(2); consequently, the amendment is accepted for filing. However, the applicant may not improve its comparative position after the last date for filing amendments as of right has passed. Therefore, any comparative advantage resulting from this amendment will be disallowed.

5. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the

proposed service area. Although RGB and McComas have filed such statements, they are deficient. RGB has not listed printed media which have significant circulation or are of particular interest to minorities and women. McComas has not listed: minority and women's organizations to encourage the referral of qualified minority and women applicants; employment services which refer job candidates without regard to their race, color, religion, national origin, or sex; area schools and colleges with minority and women enrollments; or media which have significant circulation or viewership or are of particular interest to minorities and women. Accordingly, RGB and McComas will be required to file an amended EEO program with the presiding Administrative Law Judge, within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Fuerte, Passalacqua, and RGBI would constitute hazards to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to United in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine with respect to RGB whether the applicant is financially qualified.

3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Fuerte, RGBI, and Passalacqua would constitute hazards to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the Informal Objection filed by Jorge E. Berrios IS GRANTED TO THE EXTENT INDICATED HEREIN and IS DENIED IN ALL OTHER RESPECTS.

11. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, United shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

12. IT IS FURTHER ORDERED, That the petition for leave to amend filed by McComas IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, RGB and McComas shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

14. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] We note that a grant of any application in this proceeding is without prejudice to whatever action, if any, the Commission may take in light of the ongoing negotiations with the British Virgin Islands. *See e.g., Public Notice*, Report No. W-44, released July 8, 1988.

[2] Jorge E. Berrios submitted a December 27, 1988 letter "on behalf of numerous citizens" opposing construction of a broadcast tower in the vicinity of Aguas Buenas, Puerto Rico. According to the letter, the affected residents are concerned about radiation and "other incovenients" [sic]. The letter will be considered as an informal objection to the captioned applications. However, inasmuch as all applicants except United meet applicable environmental standards, and inasmuch as the Commission's jurisdiction does not extend to other, unspecified concerns, the informal objection will be granted to the extent indicated in paragraph 3 below, and denied in all other respects.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

DAVID H. LOCKS, FRANCES LOCKS and the
LAW OFFICES OF DAVID H. LOCKS,
Complainants,

v. File No. E-88-64

U.S. TELECOM-COMMUNICATIONS
SERVICES COMPANY,
Defendant.

ORDER

Adopted: August 31, 1990; Released: September 7, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. The above-captioned complaint was filed in accordance with an order of referral to the Federal Communications Commission issued by a district court judge in a consolidated class action complaint. *See In Re: Long - Distance Telecommunications Litigation*, MDL Docket No. 598 (E.D. Mich. April 1, 1987), and *David H. Locks v. United States Telephone of the Midwest, Inc.*, No. 84 C.1465 (N.D. Ill.). On June 21, 1990, counsel for the parties jointly moved for the dismissal of this proceeding. They state that a settlement agreement among the parties in the Federal Court action from which this matter was referred was approved by the court and a final judgment was entered dismissing that case. *David H. Locks v. United States Telephone of the Midwest, Inc.* (June 7, 1990).

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies
Tariff F.C.C. No. 2

Transmittal No. 456

ORDER

Adopted: August 30, 1990; Released: August 31, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On June 4, 1990, the Ameritech Operating Companies (Ameritech) filed Transmittal No. 456, which would remove material restricting customer eligibility for credits for DS3 service, replacing it with revised eligibility requirements, amending all the pre-March 28, 1988, ICB DS3 tariff arrangements to expire concurrently with all other DS3 ICBs, and clarifying provisions regarding conversion of DS3 ICBs to general rates. These revisions were required by the Common Carrier Bureau in an Order released May 19, 1990.[1] On June 18, 1990, Communications Transmission, Inc. (CTI) filed a petition to reject or suspend Transmittal 456, and on June 19, 1990, Metropolitan Fiber Systems, Inc. (MFS) filed a petition to reject Transmittal 456, to which Ameritech filed a reply. Ameritech Transmittal 456 is scheduled to become effective September 2, 1990, on 90 days' notice.

II. SUMMARY OF PLEADINGS

2. Petitioners generally assert that Transmittal 456 retains discriminatory and unreasonable terms that contravene the *ICB Order* [2] and the *Compliance Order*. Specifically, CTI and MFS contend that Section 7.4.12 of the tariff implies that partial ICBs and ICB arrangements which existed prior to the initiation of the ICB investigation may be subject to termination liability charges subsequent to May 19, 1991. CTI Petition at 2; MFS Petition at 4. MFS argues that the requirement contained in Section 7.4.13(A) that customers give notice within 60 days from the effective date of the tariff to be eligible for a prepayment credit is overly restrictive and unreasonable. MFS Petition at 5. Finally, MFS maintains that Ameritech's proposal to deduct the value of nonreusable investment from customer's prepayment credit contravenes the Bureau's *Compliance Order*. *Id.*

3. In reply, Ameritech states that its intention is to allow all full and partial ICB arrangements to terminate on May 19, 1991, without assessing termination liability charges. Ameritech Reply at 2-3. Ameritech asserts that the tariff provision regarding termination liabilities is intended to apply to Section 7.4.12 in its entirety, making it clear that no termination liability applies to any ICB arrangement terminated on May 19, 1991. *Id.* at 3. The 60-day notice period for prepayment credit eligibility, contends Ameritech, is justified since Ameritech will notify customers it deems eligible for the credit within 30 days of the effective date of Transmittal 456. Therefore, customers need not claim a credit in that period, as asserted by MFS. They need only notify Ameritech if they disagree with Ameritech's determination of credit eligibility. *Id.* at 4. Ameritech claims that the tariff provision which deducts the value of nonreusable investment from prepayment credits has been effective since May 19, 1990, and therefore MFS's objection is not timely. *Id.*

4. On August 28, 1990, Ameritech filed Transmittal 469 to make revisions to Transmittal 456. Those revisions include removing the nonreusable investment portion of the computation of credit, removing material referencing DS3 ICB service arrangements effective subsequent to March 28, 1988, clarifying language regarding termination liability, and correcting the formulas for "buydown" or prepayment credit computation. Transmittal 469 is scheduled to become effective September 2, 1990, on not less than five days' notice.

III. DISCUSSION

5. Transmittal 469 moots most of the issues raised by petitioners. That transmittal, however, did not remove the 60-day notice requirement for prepayment credit eligibility. Section 7.4.13 provides, in pertinent part, "[c]ustomers who believe their services are eligible, but who have not been notified of eligibility, must inform the Telephone Company of the specific service or services they believe are eligible within 60 days of the original effective date of these provisions." That section also provides that customers eligible for credits will be notified by Ameritech within 30 days of the effective date of the tariff.

6. In the *Compliance Order*, the Bureau concluded that LEC restrictions on customer eligibility for prepayment credits [3] are inconsistent with the *ICB Order*. In affirming and clarifying the *ICB Order*, the Commission stated that the "credit mechanism described in the *ICB Order* is essentially a repayment of amounts some customers may have paid for a benefit they will not be receiving because [the Commission] ordered the LECs to terminate an ICB before the expected expiration date."[4]

7. We are not persuaded that the 60-day notice requirement is justified merely because Ameritech claims it will notify customers of their credit eligibility within 30 days. The credit mechanism was designed to protect customers who made prepayments to "buy down" their recurring charges. Ameritech's notice provision appears to shift the burden of calculating credits to the customer. Moreover, since the clock on the 60-day notice period tolls from the effective date of the tariff, and Ameritech claims it will notify eligible customers 30 days from that date, the customer is effectively restricted to a 30-day notice period. In these circumstances, Ameritech's 60-day notice requirement is essentially identical to the credit eligibility restrictions that we found unreasonable in the *Compliance Order*, and is therefore inconsistent with the *ICB Order*.

8. For the reasons stated above, we conclude that the 60-day notice language in Section 7.4.13(A) of Transmittal No. 456 is patently unlawful because that provision violates established Commission precedent.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that tariff revisions filed by Ameritech Operating Companies in Section 7.4.13(A) ARE REJECTED to the extent they restrict prepayment credit eligibility to customers who provide 60-days' notice.

10. IT IS FURTHER ORDERED that the petition to reject Ameritech Operating Companies Tariff F.C.C. No. 2, Transmittal No. 456, filed by Metropolitan Fiber Systems, Inc., IS GRANTED to the extent provided herein and IS OTHERWISE DENIED.

11. IT IS FURTHER ORDERED that the petition to reject or suspend Ameritech Operating Companies Tariff F.C.C. No. 2, Transmittal No. 456, filed by Communications Transmission, Inc., IS DENIED.

12. IT IS FURTHER ORDERED that Ameritech Operating Companies SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material. These revisions shall be scheduled to become effective on not less than one day's notice.

13. IT IS FURTHER ORDERED that Special Permission No. 90-988 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived for the purpose of issuing the above revisions.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] DS3 ICB Order Compliance Filings, CC Docket No. 88-136, Order, 5 FCC Rcd 3331 (Com.Car.Bur. 1990) (*Compliance Order*).

[2] Investigation of Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket 88-136, Memorandum Opinion and Order, 4 FCC Rcd 8634 (1989) (*ICB Order*).

[3] Such restrictions include, for example, requiring customers to request credit no later than 30 days after conversion to general rates, requiring customers to convert to LEC general rates, and requiring customers to demonstrate that they were offered a prepayment option as an explicit alternative to the original service bid.

[4] Investigation of Local Exhcange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Memorandum Opinion and Order on Reconsideration, released Aug. 6, 1990 (*Reconsideration Order*), at para. 24.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US West Communications
Revisions to Tariff F.C.C. No.1

Transmittal No. 81

MEMORANDUM OPINION AND ORDER

Adopted: August 30, 1990; Released: August 31, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On June 4, 1990, US West filed Transmittal No. 81, to establish a new private line, dedicated access service called "Self-Healing Network Service" (SHNS). SHNS is provisioned on two fiber optic rings, one of which is the primary or working circuit, and the other a physically diverse, protection circuit, with signals on one ring traveling in the opposite direction as the other. These fiber optic links carry DS3 signals between "nodes," and at least one "hub." If there is failure or deterioration of the transmission in the primary ring, a SHNS switch will automatically reroute traffic to the other ring. This assures that every node has an alternative pathway connecting it to the system and that a catastrophic failure in one point of the network will not significantly disrupt transmission throughout the rest of it.[1]

2. SHNS also includes (1) credits if US West fails to achieve specified time intervals and error rates, (2) performance monitoring, and (3) at the customer's option, a capability for the customer to relocate a node on the ring.[2] At the present time, only optical interfaces with capacities of either 12 or 24 DS3 circuits are available with SHNS. [3] In addition, the SHNS tariff requires that US West supply all the electronics, and the customer can only subscribe to the service with the optical to electronic interface installed by US West.

3. US West emphasizes that, although SHNS "is custom designed using standard rate components,"[4] and delivers a standard DS3 signal, it differs significantly from US West's own standard DS3 service. Thus, according to US West, whereas conventional DS3 service is provisioned on a point-to-point "hub and spoke" basis, SHNS is provisioned on a concentric circle basis, and therefore requires different rates and a different rate structure.

II. PLEADINGS

A. Petitions

4. Metropolitan Fiber Systems, Inc. (MFS) has filed a petition to reject or to suspend and investigate SHNS.[5] MFS charges that SHNS is merely a bundle of existing services with new names, so aggregated that it is impossible to evaluate or to detect likely discrimination and cross-subsidization.[6] MFS also claims that US West is engaging in "over-build," seeking to add technologically sophisticated capabilities to its general rate base --financed by captive general ratepayers -- which are unnecessary or duplicative.[7] In addition, MFS asserts that all the functions and facilities which US West will offer in SHNS are already available or easily could be made available as additional features in normal DS3 service and that the ring structure does not justify establishing an entirely new service and rate structure.

5. MFS further asserts that the unnecessary change in rate structure which would arise from the SHNS proposal violates the Private Line Rate Structure Guidelines, as codified at Section 61.40 of the Commission's Rules, 47 C.F.R. § 61.40, which were intended to facilitate comparison and treat rate elements in different offerings consistently and uniformly.[8] Finally, MFS argues that US West's cost support for SHNS is inadequate and excessively bundled. In particular, MFS claims that there is no clear explication of cost allocation and no way to determine whether various rights-of-way, conduit, and other plant acquired at the expense of other general ratepayers are subsidizing SHNS.[9]

6. MCI has filed a petition to suspend and investigate SHNS. MCI expresses interest in fiber ring systems, and it compliments US West for attempting to unbundle SHNS features and functions in a way that SWB failed to in its Tr. 1994. MCI criticizes the present SHNS proposal, however, because it requires that US West provide the electrical interface, while some potential customers, such as MCI, may wish to provide that equipment themselves.[10] MCI also opposes SHNS because it offers optical interfaces only for capacities of 12 and 24 DS3 circuits, which limits its availability only to the very largest customers.[11]

B. Reply

7. In its reply, US West states that MFS's arguments of discrimination and improper bundling assume that US West's standard DS3 service and its SHNS service are "like services" in terms of the applicable test for unreasonable discrimination under Section 202(a) of the Communications Act, functional equivalency.[12] On the contrary, US West retorts, these two services are in fact unlike from the standpoints of both customer perception and objective operation.[13] To illustrate, US West enumerates the properties of SHNS and conventional DS3, respectively.

8. US West also denies that its cost support is either inadequate or overly bundled. US West first reviews its general cost methodology, which is basically the same as for its existing DS3 service. It then seeks to refute a number of MFS's specific alleged cost discrepancies.[14]

9. US West replies to MFS's interconnection argument, *i.e.*, that the Commission should mandate interconnection of LEC central offices with the facilities of alternative access providers, by arguing that the instant proceeding is not the proper forum for such wide-ranging and complex issues. US West further states that MFS, US West, and many other parties have already engaged in this debate in the pending Rule Making on this matter initiated by MFS.[15]

10. US West replies to MCI that it is under no legal obligation to supply "dim" optical services without associated electronics, and that US West wishes to supply those electronics itself in order to ensure the extremely high reliability which is SHNS's major selling point.[16] US

West also replies to MCI's argument that SHNS requires customers to order SHNS service in groups of 12 or 24 DS3 channels. US West notes that the tariff permits customers to order as few DS3 channnels as they may require. The interface charges are for electronics with minimum capacities of 12 or 24 channels. US West states that, when interfaces are available with smaller capacities, it anticipates providing those as well.[17]

III. DISCUSSION

11. The Common Carrier Bureau has reviewed US West's filing, MFS's and MCI's petitions, and US West's reply. We find that no compelling argument has been presented that the proposed tariff is patently unlawful so as to require rejection, and that an investigation of the tariff is not warranted at this time.

12. Therefore, IT IS ORDERED that the petitions to reject or to suspend and investigate filed by Metropolitan Fiber Systems, Inc. and MCI Telecommunications Corporation are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Description and Justification (D&J) at 1-1 to 1-5.

[2] *Id.* at 1-5.

[3] *Id.* at 1-7. The tariff does *not* require users to use the maximum capacity of the interfaces by ordering 12 or 24 DS3 channels.

[4] *Id.* at 1-1.

[5] MFS makes many of the same arguments here as it does against SWB's earlier fiber ring under Tr. 1994 and similar services.

[6] MFS Petition at 2-3.

[7] *Id.* at 3-4.

[8] *Id.* at 10-11.

[9] *Id.* at 11-12.

[10] MCI Petition at 2-3.

[11] *Id.* at 3-4.

[12] US West Reply at 5-6.

[13] *Id.* at 5-8.

[14] *Id.* at 7-9.

[15] *Id.* at 2 n.4.

[16] *Id.* at 3-5.

[17] *Id.* at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: September 7, 1990

Report No. DS-1000

COMMON CARRIER SERVICES INFORMATION

INFORMATIVE:

REQUEST FOR DECLARATORY RULING

IDB Communications Group, Inc. (IDB) has requested a declaratory ruling that the public interest would not be adversely affected by the sale of 4.99% of its common stock to Swissair Beteiligungen AG (Swissair), a Swiss entity, which would result in slightly more than 25% of IDB's common stock being owned by aliens. IDB's subsidiaries hold various satellite earth station and terrestrial microwave common carrier licenses.

Interested parties may file comments with respect to IDB's request for a declaratory ruling within 10 days of this Public Notice. Copies of IDB's request are available for inspection in the Domestic Facilities Division (Common Carrier Bureau) Public Reference Room, Room 6220, 2025 M Street, N.W., Washington, D.C. This request is subject to further consideration and review and may be returned or dismissed if it is not found to be in accordance with the Commission's rules, regulations and other requirements.

For further information, contact Fern Jarmulnek at (202) 634-1624.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Satellite Company d/b/a Contel ASC — File No. 34-DSS-ML-90

Application for Modification of Authorization for ASC-2 Satellite

ORDER AND AUTHORIZATION

Adopted: August 31, 1990 **Released: September 7, 1990**

By the Chief, Domestic Facilities Division:

1. American Satellite, d/b/a Contel ASC (Contel ASC), has applied to modify the authorization for its ASC-2 satellite. Specifically, Contel ASC proposes to modify the C-band coverage pattern of ASC-2 so that service can be provided to Hawaii on both polarizations. No comments or oppositions have been filed with respect to this application. For the reasons discussed below, Contel ASC's request is granted.

DISCUSSION

2. ASC-2 was originally licensed in 1983 and assigned to 83^0 W.L.[1] Construction of the satellite was completed in 1986 and Contel ASC states that it is currently being refurbished for launch in the spring of 1991. As ASC-2 is currently designed, it is capable of providing service into Hawaii at C-band only on one polarization. According to Contel ASC, because acceptable C-band service to Hawaii cannot be provided from 83^0 W.L., it was not concerned about this design limitation. However, because ASC-2 has been reassigned to 101^0 W.L.,[2] where it is possible to provide high quality C-band service into Hawaii on both polarizations, Contel ASC determined that the satellite design should be modified and a vertical polarization sense should be added.

3. Contel ASC asserts that its design proposal is relatively simple and can be accomplished without impact to the satellite's launch schedule. It has submitted a technical exhibit in support of its statement that the modification will not result in undue interference to adjacent satellites because the service to Hawaii is already authorized on one polarization and the same types of services will be offered on both polarization senses.

4. According to Contel ASC, having the ability to provide Hawaii service on additional ASC-2 transponders will facilitate the transition of service for its customers when Westar IV, which is operating at 99^0 W.L., is retired in late 1991. [3] Contel ASC states that the proposed modification will permit more efficient use of ASC-2's 101^0 W.L. orbit location and will thus benefit the public.

5. Contel ASC's application is granted. The proposed modification, which is unopposed, will serve the public interest, will not cause increased interference to adjacent satellites and will not delay the launch schedule of ASC-2.

CONCLUSION

6. Accordingly, IT IS ORDERED that Application File No. 34-DSS-90 is granted and American Satellite Company d/b/a Contel ASC IS AUTHORIZED to modify its ASC-2 satellite as proposed in its application.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] American Satellite Company, 94 FCC 2d 39 (1983).

[2] American Satellite Company, 5 FCC Rcd 1186 (1990).

[3] Contel ASC owns nine transponders on Westar IV and states that it provides service to more than 21,000 earth stations from that satellite. It intends to serve these customers from ASC-2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ONE CALL
COMMUNICATIONS, INC.
Complainant,

v. File No. E-90-196

UNITED TELEPHONE
COMPANY OF
INDIANA, INC.
Defendant

ORDER

Adopted: August 31, 1990; Released: September 7, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, One Call Communications, Inc. (hereinafter "One Call") filed the above-captioned formal complaint against United Telephone Company of Indiana, Inc. (hereinafter the "Defendant") seeking reimbursement and "other appropriate relief" for interstate access charges levied by the Defendant against One Call during the period from January 1, 1987 through December 31, 1988. In accordance with Commission rules governing formal complaint proceedings, Defendant's answer to the complaint was due on June 25, 1990 and an answer was duly filed.

2. On July 17, 1990, One Call filed a motion for leave to withdraw the complaint, stating that it does not wish to pursue its claim against the Defendant and is seeking leave to withdraw its complaint with prejudice. We are satisfied that withdrawal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that One Call's Motion for Leave to Withdraw Complaint IS GRANTED, and that the above-captioned proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: August 23, 1990

REVISED FILING WINDOW FOR POINT-TO-POINT CHANNELS IN THE 900 MHZ GOVERNMENT/ NON-GOVERNMENT FIXED SERVICE

General Docket No. 82 - 243

In a *Public Notice* released June 4, 1990, the Office of Engineering and Technology (OET) announced a filing window for Government/Non-Government Fixed Service channels in the 932-935/941-944 MHz bands.[1] However, on June 22, 1990, prior to the opening of the filing window, a "Petition for Stay of Filing Window"(*Stay Petition)* and a "Petition for Reconsideration or Clarification of Application Filing Procedures" (*Reconsideration Petition)* were received from the Utilities Telecommunications Council (UTC). On July 2, 1990, OET granted the *Stay Petition*.[2] Since UTC's *Reconsideration Petition* is applicable only to the point-to-multipoint channels in the 932-932.5/941-941.5 MHz bands, no purpose would be served by delaying the filing window for the point-to-point channels in the 932.5-935/941.5-944 MHz bands until the Commission resolves the issues raised in the *Reconsideration Petition*. Accordingly, this public notice establishes a new filing window for applications for the point-to-point channels. A public notice establishing a new filing window for applications for the point-to-multipoint channels will be released upon Commission resolution of the issues raised in the *Reconsideration Petition*.

A list of available 900 MHz point-to-point channels is attached as Appendix A to this public notice. The public notice summarizes the application filing process for the channels and establishes the initial application filing period. Subject to the requirements set forth below, applications for the point-to-point channels must be filed during the one-week period beginning October 1, 1990, and ending October 5, 1990. Except as indicated below, applications received at the official filing locations listed below before October 1 or after October 5 will be dismissed as untimely filed.

The Commission will utilize the facilities of its Treasury Department lockbox bank to process all filings *requiring a fee*. The specific filing requirements for Non-Government applications will vary depending upon the nature of the facilities requested, as described below. Government applications will be filed with the National Telecommunications and Information Administration (NTIA).

Applications Requiring a Fee

Common Carrier Bureau applications must be filed on FCC Form 494 and must comply with all pertinent standards of Part 21 of the Commission's Rules. Each individual application must be accompanied by FCC Form 155 with Fee Type Code CZZ designated in the appropriate column and a check made payable to the Federal Communications Commission in the amount of $155. Each individual application must be in a sealed, manila envelope with the following description on its face:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Common Carrier Bureau
P.O. Box 358989
Pittsburgh, PA 15251-5989

Private Radio Bureau applications must be filed on FCC Form 402 and must comply with all pertinent standards of Parts 1 and 94 of the Commission's Rules. Each individual application must be accompanied by FCC Form 155 with Fee Type Code PZZ designated in the appropriate column and a check made payable to the Federal Communications Commission in the amount of $155. Each individual application must be in a sealed, manila envelope with the following description on its face:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Private Radio Bureau
P.O. Box 358994
Pittsburgh, PA 15251-5994

Applications may be delivered to Mellon Bank in one of two ways, either walked in or mailed in.

Walk-Ins

Items may be hand-delivered to Three Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA, 15259 *anytime* between 12:01 a.m. Monday, October 1, 1990 and 11:59 p.m. Friday, October 5, 1990.

The "deliverer" should proceed directly to the guard station, located in the lobby of Three Mellon Bank Center, and identify himself (herself) as having applications for the 900 MHz Point-to-Point Channels Filing Window. The guard will then direct the person to the 27th floor of Three Mellon Bank Center. At no time should the window filing applications be left at the guard station.

Once the person has arrived at the 27th floor, he (she) should proceed to the telephone located near the security doors and dial ext. 4-5494. The person should state that they have applications pertaining to the window filing. At this time, someone will greet the person and receive the window filing applications. If a copy is proffered for stamping, *one* receipt only will be date stamped per application and returned. Absent any specific instructions to the contrary, the first page of the proffered copy will be date stamped.

Mail-Ins

Filings may be mailed to one of the two lockboxes listed below. These items must be *received* between Monday, October 1, 1990 and Friday, October 5, 1990.

For Common Carrier Bureau applications, mail to:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Common Carrier Bureau
P.O. Box 358989
Pittsburgh, PA 15251-5989

For Private Radio Bureau applications, mail to:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Private Radio Bureau
P.O. Box 358994
Pittsburgh, PA 15251-5994

Any questions regarding filing fees should be directed to: Fees Hotline, (202) 632-FEES.

Applications Not Requiring a Fee

Common Carrier Bureau applications *not requiring a fee* (*See* Section 1.1112 of the Commission's Rules) must be filed on FCC Form 494 and must comply with all pertinent standards of Part 21 of the Commission's Rules. Each individual application must be in a sealed, manila envelope with the following description on its face:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Common Carrier Bureau
Washington, DC 20554

Applications that are mailed must be *received* at the above address between Monday, October 1, 1990 and Friday, October 5, 1990. Applications that are hand-delivered must be brought to the Federal Communications Commission, 1919 M Street, NW, Office of the Secretary, Room 222, Washington, DC 20554 between 8:00 a.m., Monday, October 1, 1990 and 5:30 p.m., Friday, October 5, 1990.

Private Radio Bureau applications *not requiring a fee* (*See* Section 1.1112 of the Commission's Rules) must be filed on FCC Form 402 and must comply with all pertinent standards of Parts 1 and 94 of the Commission's Rules. Each individual application must be in a sealed, manila envelope with the following description on its face:

Federal Communications Commission
900 MHz Point-to-Point Channels Filing Window
Private Radio Bureau
Gettysburg, PA 17326.

Applications that are mailed must be *received* at the above address between Monday, October 1, 1990 and Friday, October 5, 1990. Applications that are hand-delivered must be brought to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17326 between 8:00 a.m., Monday, October 1, 1990 and 4:30 p.m., Friday, October 5, 1990.

All Applications

REMEMBER: Each individual complete application must be in an individual envelope marked as indicated above. Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The changes to the filing instructions incorporated in this public notice--namely, the fee type codes and post office box numbers for those applications requiring a fee--are in effect only for the time period and the purpose stated herein. These changed procedures override any other procedures that may be set forth in the Commission's Rules. Failure to observe these instructions will result in dismissal of the application(s).

Applicants for the channels listed in Appendix A *must* specify their intended frequencies of operation. Applications for one-way, single channel use will be considered only if accompanied by a showing that unpaired spectrum is not available in other bands and that single channel use of the 932.5-935/941.5-944 MHz bands will not impair spectrum efficiency. Applicants who request a channel that may affect grandfathered broadcast auxiliary stations at 942-944 MHz must also submit evidence that frequency coordination has been performed in accordance with Section 21.100(d) of the Commission's Rules with all potentially affected users. The grandfathered broadcast auxiliary stations may modify their facilities provided that they submit evidence of frequency coordination in accordance with Section 21.100(d) of the Commission's Rules and provided that they do not preclude the use of any authorized or pending point-to-point applications. [3] A list of these broadcast auxiliary stations and their locations is attached as Appendix B to this public notice.

Applications that have not been dismissed or otherwise found unacceptable will be sorted by channel selection, and applications for channels that are not mutually exclusive with any other pending application will be processed and assigned the requested channel pair. In the event that two or more applications are found to be mutually exclusive, a public notice will be issued listing the applications and any available channels; affected applicants will have an opportunity to resolve the mutual exclusivity by amending their applications, despite the closed window for the filing of applications. These modified applications will be required to contain the requisite engineering analysis with regard to potential interference to previously authorized facilities and pending applications. If mutually exclusive applications remain after this process is concluded, a lottery will be conducted for each channel among all remaining mutually exclusive applicants.

Applications, including Government applications filed with the NTIA, will be listed on a Commission public notice as soon as feasible after the filing window closes. Petitions to deny filed against any of these applications may be filed in accordance with either Section 1.962(g) or Section 21.30 of the Commission's Rules, whichever is applicable.

After this assignment process has concluded, the Commission will issue a list of all applications that have been granted. At that time, we will also establish the date after which new applications can be filed for any remaining channels in these bands.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTES

[1] *See Public Notice*, 5 FCC Rcd 3547 (Chief Engineer 1990).

[2] *See Order*, 5 FCC Rcd 4042 (Chief Engineer 1990).

[3] In accordance with footnote US302 to the Table of Frequency Allocations, broadcast auxiliary station applicants in Puerto Rico may continue to apply for channels in the 942-944 MHz band and broadcast auxiliary station licensees in Puerto Rico may continue to modify existing facilities in the 942-944 MHz band subject to Section 21.100(d) frequency coordination with other applicants for those channels. *See* Section 2.106 of the Commission's Rules. 47 CFR Section 2.106.

Appendix A

25 kHz Point-to-Point Channels

Transmit (or Receive) Frequency (MHz)	Receive (or Transmit) Frequency (MHz)
932.5125	941.5125
.5375	.5375
.5625	.5625
.5875	.5875
.6125	.6125
.6375	.6375
.6625	.6625
934.8375	943.8375
.8625	.8625
.8875	.8875
.9125	.9125
.9375	.9375
.9625	.9625
.9875	.9875

50 kHz Point-to-Point Channels

Transmit (or Receive) Frequency (MHz)	Receive (or Transmit) Frequency (MHz)
932.7000	941.7000
.7500	.7500
934.8000	943.8000

100 kHz Point-to-Point Channels

Transmit (or Receive) Frequency (MHz)	Receive (or Transmit) Frequency (MHz)
932.8250	941.8250
.9250	.9250
933.0250	942.0250
934.5250	943.5250
.6250	.6250
.7250	.7250

200 kHz Point-to-Point Channels

Transmit (or Receive) Frequency (MHz)	Receive (or Transmit) Frequency (MHz)
933.1750	942.1750
.3750	.3750
.5750	.5750
.7750	.7750
.9750	.9750
934.1750	943.1750
.3750	.3750

Appendix B

Broadcast Auxiliary Service Licensees at 942-944 MHz

Location	Frequency (MHz)	Callsign	Licensee
ALABAMA			
Mobile	944.000	KHH29	Trio Broadcasting Inc.
ALASKA			
North Kenai	944.250	WLO469	Pickle Hill Public B/C Inc.
CALIFORNIA			
Eureka	942.375	KGA29	Merit B/C Corp.
	942.625	KGA29	Merit B/C Corp.
Fresno	943.000	KWU28	East West FM Group Inc.
Hatchet Mt.	942.500	WDD21	Hermiston Broadcasting Co.
Los Angeles	942.875	KNU22	Classic Comm. of LA LTD
	943.125	KNU22	Classic Comm. of LA LTD
	943.375	KVG27	KFI, Inc.
	943.625	KVG27	KFI, Inc.
	943.375	WBS371	KFI, Inc.
	943.625	WBS371	KFI, Inc.
	943.875	WCX527	H & G Comm. of California
	944.125	WCX527	H & G Comm. of California
	943.000	WHY647	Classic Comm. of LA LTD
	942.500	WJG86	Eleven-Fifty Corp.
Modesto	944.000	KUZ53	KOSO INC TR/AS KOSO B/C
Mountain View	942.475	KIP46	Los Altos B/C Inc.
	942.625	KIP46	Los Altos B/C Inc.
Pittsburg	943.500	KMA91	Diamond B/C of Calif., Inc.
Sacramento	944.000	KNL38	Family Stations Inc.
San Diego	943.500	WHB306	Southern Nevada Radio, Inc.
San Francisco	944.125	KR5559	Bonneville Holding Co.
	944.000	WLL777	Pacific FM Inc.
Santa Barbara	943.400	KMS61	Schuele Organization Inc.
	943.650	KMS61	Schuele Organization Inc.
Stockton	943.000	KMQ87	Anchor Media TV Inc.
	942.500	KNH28	Valley Broadcasters Inc.
COLORADO			
Boulder	944.000	WGZ697	Boulder Valley B/C Inc.

CONNECTICUT			
Fairfield	943.500	WAL22	Sacred Heart Univ. Inc.
FLORIDA			
Key West	943.000	KOA34	Family Radio LTD
Miami Beach	944.000	WLD501	Howard B/C Corp.
Panama City	943.000	KNZ61	Communications SVCS B/C Inc.
Punta Gorda	944.000	WLO821	University of South Florida
Tampa	944.000	KIX39	Tampa Television Inc.
GEORGIA			
Atlanta	942.500	KRY36	Great American TV & Radio
Columbus	943.500	KIN24	Columbus Bcstg Co Inc.
Manchester	943.850	KVR58	WFDR Inc.
	944.150	KVR58	WFDR Inc.
IDAHO			
Teakean Butte	943.000	KZV50	4-K Radio Inc.
ILLINOIS			
Chicago	943.500	KSA37	The Moody Bible Inst.
Edwardsville	944.225	WLL450	Horizon B/C Corp.
	944.225	WLL490	Horizon B/C Corp.
Pekin	944.250	WLO530	Central Ill. Radio
INDIANA			
South Bend	943.875	KDI40	WSBT, Inc.
IOWA			
Dubuque	942.375	KVV20	Telegraph-Herald Inc.
	942.625	KVV20	Telegraph-Herald Inc.
Mount Pleasant	944.000	WLL623	KILJ Inc.
Waterloo	943.000	KAO64	KXEL B/C Co. Inc.
KANSAS			
Wichita	942.375	KVW20	Yellow Stone Brick Radio
	942.625	KVW20	Yellow Stone Brick Radio
	943.000	KMV35	Aberdeen Comm. Inc.

KENTUCKY			
Paducah	943.500	KWV68	WDXR, Inc.
LOUISIANA			
Alexandria	944.000	KTB93	Alexandria B/C Co Inc.
Shreveport	942.500	KRU73	Shreveport Great Empire B/C
MAINE			
Portland	942.875	KCG45	WHOM Associates
	943.125	KCG45	WHOM Associates
	944.000	KVR53	Guy Gannett B/C Svcs
MARYLAND			
Cumberland	943.875	KUZ51	WTBO-WKGO Corp.
MASSACHUSETTS			
Springfield	944.000	KMV31	New England B/C Corp.
MICHIGAN			
Alpena	943.875	WLF231	WHSB, Inc.
	944.125	WLF231	WHSB, Inc.
MINNESOTA			
Duluth	943.000	KZV51	WDSM/KZIO Inc.
MISSOURI			
Mansfield	944.000	WLO822	Terry L. Claar
NEW MEXICO			
Roswell	942.875	KUX93	King B/C Co.
	943.125	KUX93	King B/C Co.
Tohatchi	943.500	WLD211	Ramah Navajo School Board

NEW YORK			
Albany	943.375	KEH79	WAMC
	943.625	KEH79	WAMC
Buffalo	942.500	KEK67	Western NY Educ. TV Assn
	943.000	KEK64	Western NY Educ. TV Assn
Cornwall	943.000	WBD21	Radio Cornwall
NORTH CAROLINA			
Raleigh	944.000	KUY78	Capitol B/C Inc.
Washington	944.000	KGY95	Tar Heel B/C System Corp.
NORTH DAKOTA			
Williston	942.500	KWE37	KGCX, Inc.
	943.000	KWE38	KGCX, Inc.
OKLAHOMA			
Poteau	942.875	WAU24	Indian Nation B/C
	943.125	WAU24	Indian Nation B/C
OREGON			
Ashland	943.000	WDF26	Radio Medford Inc.
Corvallis	943.500	KRZ69	State of Oregon
Portland	943.000	KTZ87	Alexander B/C Co.
PENNSYLVANIA			
Erie	943.000	WAA32	Burbach B/C Co.
Meadville	944.000	WLO824	Great Circle B/C Co.
Milton	942.875	KYX72	WMLP, Inc.
	943.125	KYX72	WMLP, Inc.
Scranton	942.375	KYK73	Scranton Times
	942.625	KYK73	Scranton Times
	942.500	KYX73	Scranton Times
Tyrone	942.375	KGK39	Tyrone B/C Co.
	942.625	KGK39	Tyrone B/C Co.
	942.875	KGK40	Tyrone B/C Co.
	943.125	KGK40	Tyrone B/C Co.
	943.375	KHD20	Tyrone B/C Co.
	943.625	KHD20	Tyrone B/C Co.

SOUTH CAROLINA			
Spartanburg	943.875	KJN80	Spartan Radiocasting Co.
	944.000	KJN80	Spartan Radiocasting Co.
	944.125	KJN80	Spartan Radiocasting Co.
TENNESSEE			
Dyersburg	943.850	KGB95	Dr. Pepper Pepsi-Cola
	944.150	KGB95	Dr. Pepper Pepsi-Cola
Knoxville	942.500	KTY51	Stoner B/C System Inc.
TEXAS			
Dallas	944.125	WHJ38	Bonneville Holding Co.
Houston	943.000	KLV57	Gulf Television Corp.
Texarkana	942.500	KZZ21	KCMC Inc.
Waco	943.500	WAL23	KWTX B/C Co.
UTAH			
Salt Lake City	942.375	KXZ63	KCPX Inc.
	942.625	KXZ63	KCPX Inc.
VIRGINIA			
Bedford	944.000	WLO331	Winfas of Virginia Inc.
Danville	943.500	KEB26	Piedmont B/C Corp.
Salem	942.875	KIK83	Mel Wheeler Inc.
	943.000	KIK83	Mel Wheeler Inc.
	943.125	KIK83	Mel Wheeler Inc.
WASHINGTON			
Pasco	942.500	WGY68	Tri-Cities Comm. Inc.
WISCONSIN			
Eau Claire	942.500	KNN20	Central Communications Inc.
Oshkosh	943.850	KVP22	Kimball B/C Inc.
	944.150	KVP22	Kimball B/C Inc.

PUERTO RICO

Cayey	942.500	WLH369	Arso Radio Corp.
Hato Rey	943.000	WLF599	Catholic Apostolic & Roman
Isabela	943.875	WLF900	Radio Noroeste B/C Inc.
	944.125	WLF900	Radio Noroeste B/C Inc.
Jayuya	943.000	WAX25	Voice of Puerto Rico Inc.
Mayaguez	943.875	WLE823	WAEL Inc.
	944.125	WLE823	WAEL Inc.
Morovis	944.000	WLO450	Wifredo G. Blanco PI
Rincon	942.375	WLF565	Arso Radio Corp.
	942.625	WLF565	Arso Radio Corp.
San Juan	942.500	KCI71	Comm. Counsel Group, Inc.
	944.000	KRU35	Hearst Radio Inc.
	943.000	KUQ50	Radio Americus Corp.
	943.500	WLF715	Ministerio Radial Cristo
Villa Fontan Park	943.875	WLJ532	Aero B/C Corp.
	944.125	WLJ532	Aero B/C Corp.

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